

THE
LAW
AND
PRACTICE
OF

John Writs of Error, *Scott* IN THE *Poulton*
COURTS

Common Pleas, King's Bench, Ex-
chequer Chamber, and Parliament.

To which are subjoined

The COSTS in ERROR: likewise special WRITS of
Ca. sa. Fi. fa. and Sci. fa. for each Court, after
Affirmance, Reversal, and Nonpros in Error.

N. B. The Precedents were drawn by Special
Pleaders of the first Repute, viz.

J. BURLAND, Esq;
F. BOWER, Esq;

A. CHAMBER, Esq;
J. LANE, Esq;

And others of distinguished Abilities

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WRITS OF Error are of some antiquity, being plainly to be discerned as far back as the reign of William the Conqueror, which is a space of upwards of three hundred years; for we find the forms of two sorts of writs of error inserted in the *Register of writs*, preserved in Chancery, a book peculiarly calculated (as its title imports) for the repository of precedents of the different kinds of writs, not only of such as were introduced into our jurisprudence by the Norman subjects and followers of William, but likewise of other writs which were framed by Masters in Chancery. And this and other convincing testimonies make it evident, that the use of these writs of error was originally borrowed from the French, by whom it is termed *proposition d'erreur*.

THIS WORK is entered, ac-
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High Court of the Exchequer,
and wherever printed, will be pro-
secuted.

Printed by J. J. 77

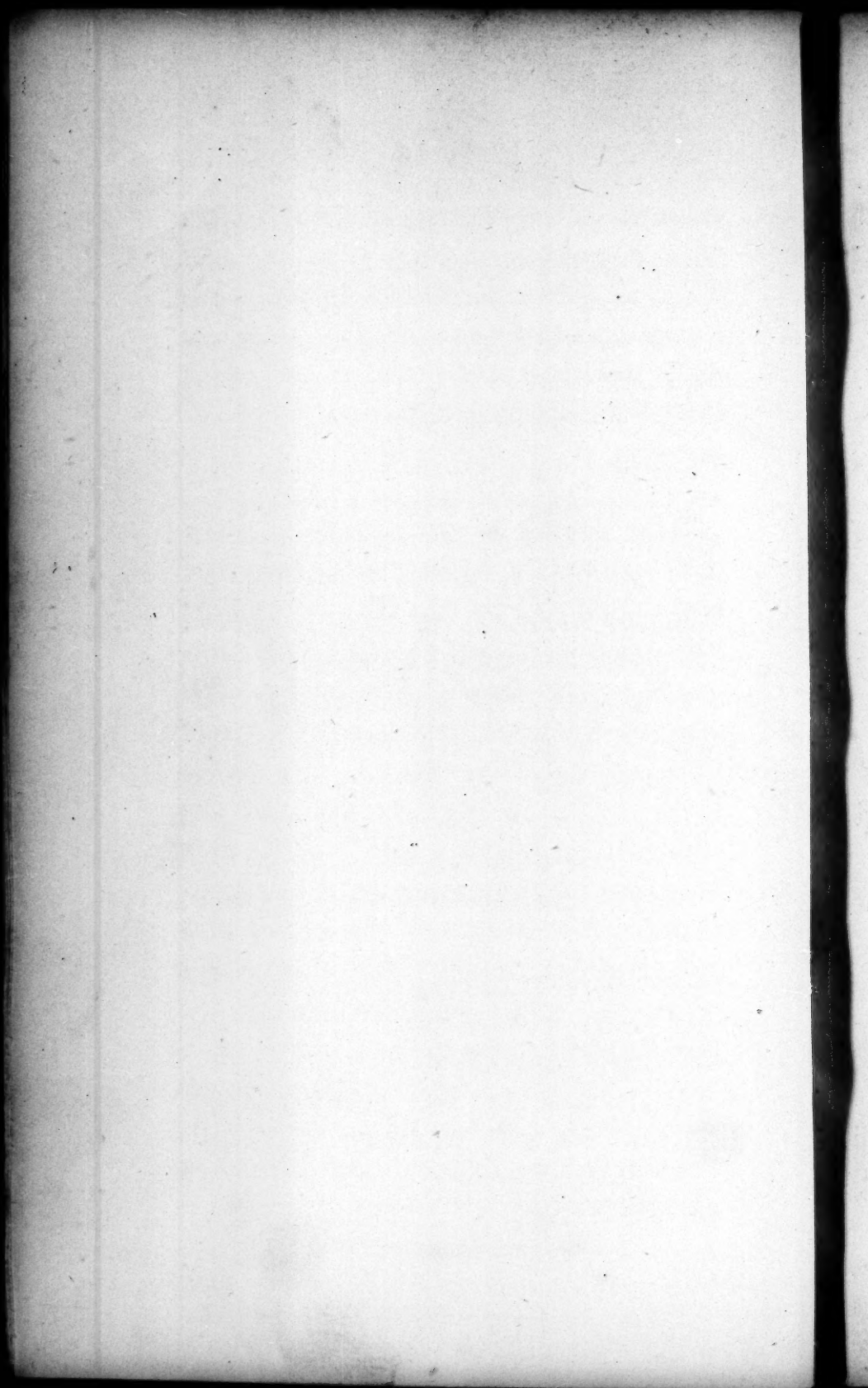
ADVERTISEMENT.

WRITS OF ERROR are of some antiquity, being plainly to be discovered so far back as the reign of *William the Conqueror*, which is a space of upwards of seven hundred years; for we find the forms of two sorts of writs of error inserted in the *Register of writs*, preserved in *Chancery*, a book pecaliarly calculated (as it's title imports) for the repository of precedents of the different kinds of writs, not only of such as were introduced into our jurisprudence by the *Norman* subjects and followers of *William*, but likewise of other writs which were framed by Masters in *Chancery*. And this and other concurring testimonies make it evident, that the use of these writs of error was originally borrowed from the *French*, by whom it is termed *proposition de erreur*.

But controversies upon writs of error, (and also upon writs of attainr,) are mentioned by *Coke* *, to have been rare, during the reigns of *Edward III.* *Richard II.* and *Henry IV.* but that they soon afterwards began to grow more frequent; insomuch that, in queen *Elizabeth's* time, the *assignment of errors* was very common; and certain it is, that error makes the largest title in all *Croke*, and his contemporary reporters. This general practice, therefore, gave rise to the several statutes, which were enacted in that reign, for the regulation of these suits; that of the 27th of *Elizabeth* being however the chief, and indeed the principal one, (saving such as relate to costs, and the inferior courts of record) by which they are governed at this day.

That it is to writs of error we are indebted for our settled law cases, some writers have not hesitated to affirm; who have also added, that determinations of the *Exchequer Chamber*; (and the same too,

* 6 Report. *Higgins's case.*



we presume they meant, of the other resorts of justice upon writs of error,) like the laws of the *Medes* and *Persians*, have seldom undergone contradiction or alteration: the right of the subject to appeal being a fundamental principle of the constitution.

This publication includes every thing that is necessary for the management of suits founded upon writs of error; which suits are in general of twice as long duration as any other, except those in the courts of equity: for it contains, what the title page sets forth, not only the law of the land, and the practice of the respective courts at *Westminster*, (into which only writs of error can be brought in this kingdom;) but also the costs of suit, and precedents of the pleadings, &c. in great variety: the whole being formed upon a plan to put it in the power of every practitioner of the law, to conduct these litigations (*pro* and *con.*) to the best advantage, without having recourse to any other assistance.

Law books in general are said to consist of collections; (and from the nature of the subject, must do so in some degree:) but then it has also been observed, and found to be true by those who have made the experiment, that the task is much more troublesome in the *law*, than in any other profession or science: for almost all other subjects are treated of, and discussed, with connexion and regularity: whereas the law is not; but, on the contrary, is with difficulty capable of it. Yet will it be found, that the practical part of *the Law and Practice of writs of error*, together with a very considerable share of the precedents, &c. are intirely NEW.

The precedents interspersed in the proceedings, and those of special writs of execution, and *scire facias*, after *affirmance*, *nonpros*, and *reversal* of judgments, (which are deposited in chapter the last;) will be found equally useful with the rest of the contents; as we dare pronounce them the most correct of any that have ever yet appeared in print. The declarations, for
 4 example,

...nothing of the other
...in a superior manner
...current in the profes-
...those of the famous
Mr. ... and as they run on general
...are wanted almost every
...be transcribed herefrom,
...occasionally, for other
...in error, with the
...any one of which pre-
...cost more than the price
of the whole work.

THE

example, to say nothing of the other pleadings, are drawn in a superior manner to any that are now current in the profession, (not excepting those of the famous Mr. *Warren* :) and as they run on general matters, which are wanted almost every term, so can they be transcribed herefrom, and made to serve, occasionally, for other causes besides those in error, with the greatest facility ; any one of which precedents singly, cost more than the price of this whole work.

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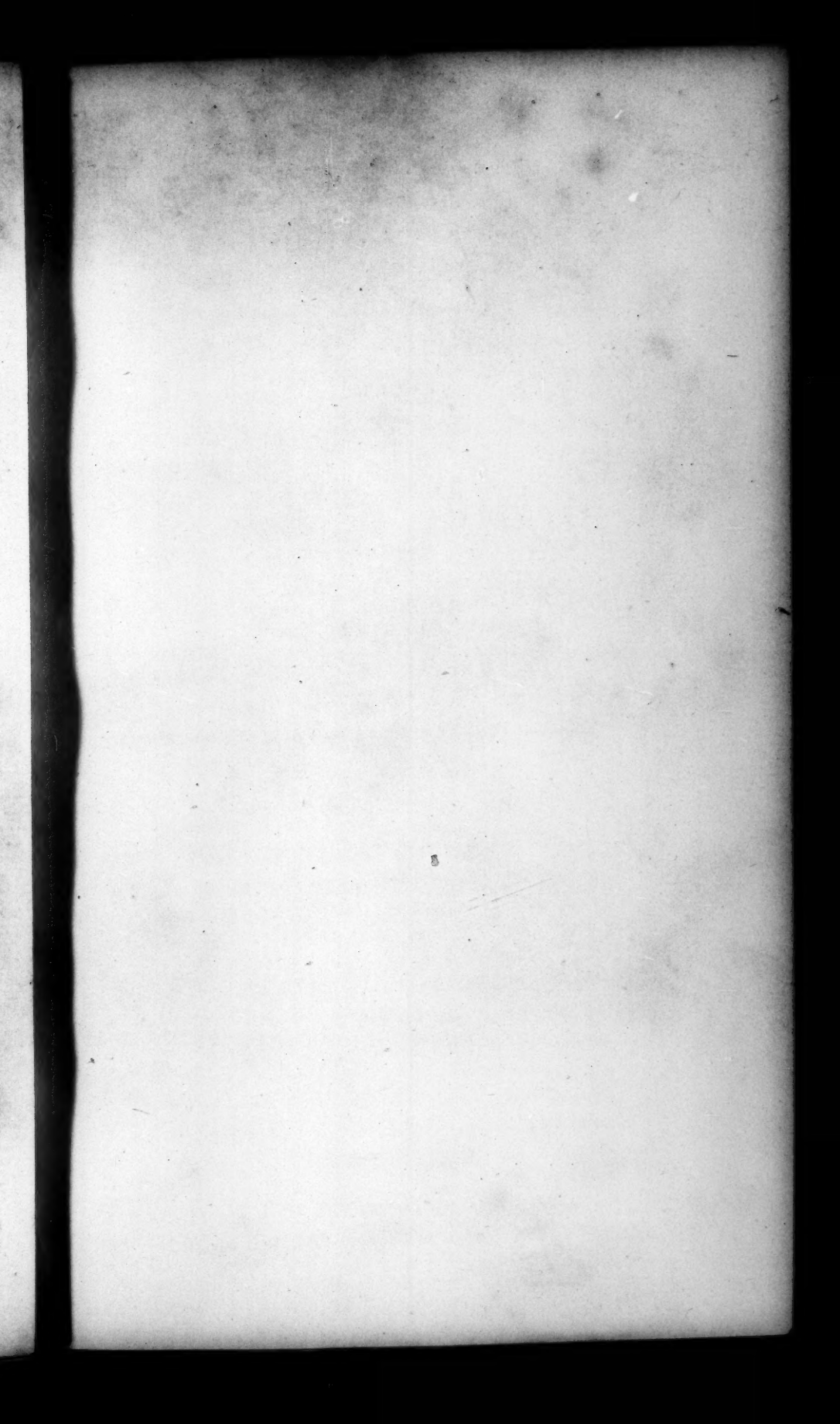
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T H E



THE
LAW
AND
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OF

Writs of Error.

CHAP. I.

*From what courts, and into what courts,
and in what cases, a writ of error
lies.*

A WRIT OF ERROR lies for some supposed Finch, L. mistake in the proceedings of a court of ⁴³⁴ record; for, to amend errors in a base court, not of record, a writ of *faux* judgment lies. The writ of error only lies upon matter of *law* arising upon the face of the proceedings; so that no evidence is required to substantiate or support it; and there is no method of reversing an error in the determination of facts, arising upon the merits of the action, but by

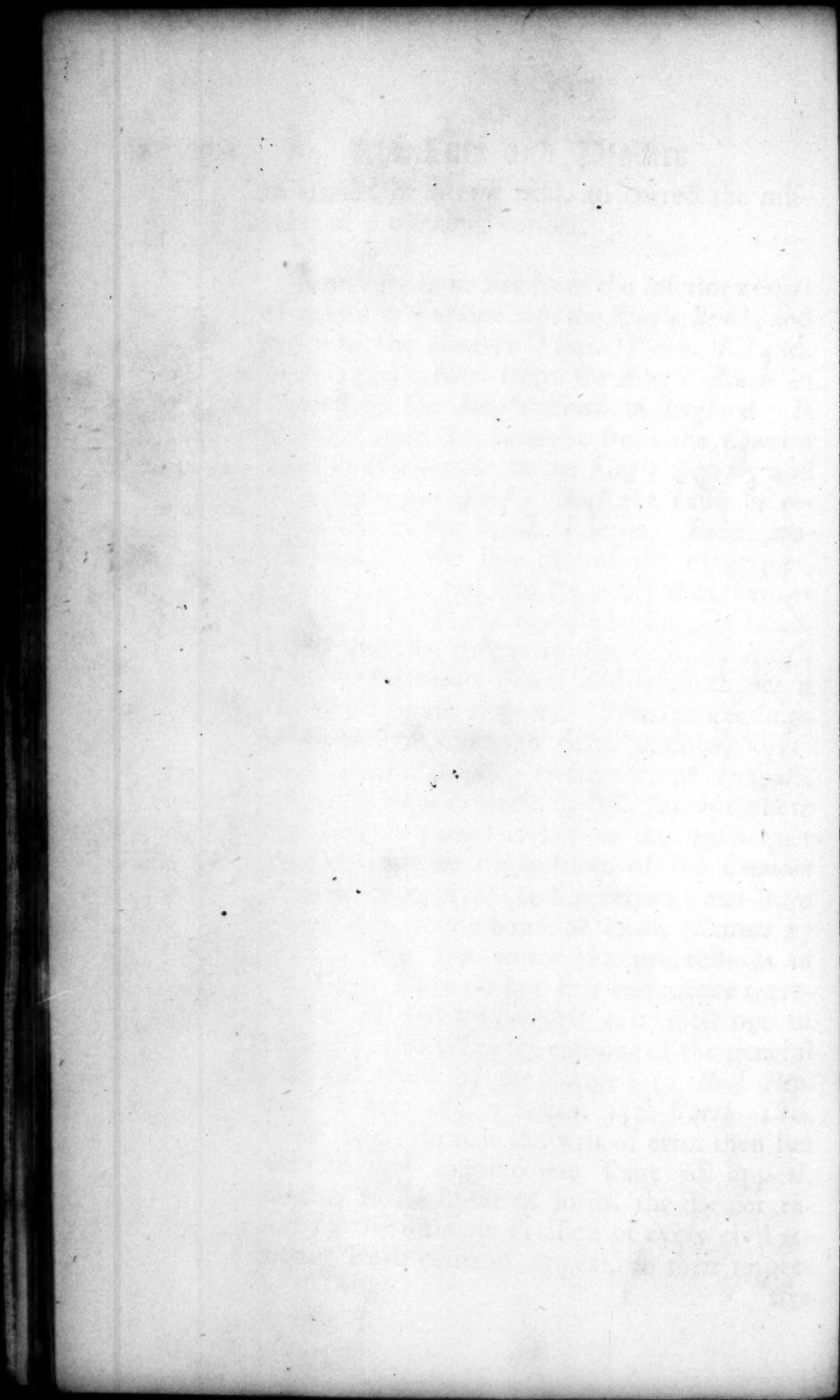
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an attaint, or a new trial, to correct the mistakes of the former verdict.

A writ of error lies from the inferior courts of record in *England* into the *King's Bench*, and not into the *Common Pleas*. (*Finch. L.* 480. *Dyer* 250.) Also from the *King's Bench* in *Ireland*, to the *King's Bench* in *England*. It likewise may be brought from the *Common Pleas* at *Westminster* to the *King's Bench*; and then from the *King's Bench* the cause is removeable to the house of lords. From proceedings on the law side of the exchequer, a writ of error lies into the court of exchequer chamber, before the lord chancellor, lord treasurer, and the judges of the court of *King's Bench* and *Common Pleas*: and from thence it lies to the house of peers. From proceedings in the *King's Bench*, in debt, detinue, covenant, account, case, ejectment, or trespass, originally begun therein by bill, (except where the king is party) it lies to the exchequer chamber, before the justices of the *Common Pleas* and barons of the Exchequer; and from thence also to the house of lords. (*Statute 27 Eliz. c. 8.*) But where the proceedings in the *King's Bench* do not first commence therein by bill, but by original writ sued out of chancery, this takes the case out of the general rule laid down by the statute; (*1 Roll. Rep.* 264. *1 Sid.* 424. *1 Saund.* 346. *Carth.* 180. *Comb.* 295.) so that the writ of error then lies without any intermediate stage of appeal, directly to the house of lords, the dernier resort for the ultimate decision of every civil action. Each court of appeal, in their respective



tive stages, may upon hearing the matter of law, in which the error is assigned, reverse or affirm the judgment of the inferior courts; but none of them are final, save only the house of peers, to whose judicial decisions all other tribunals must therefore submit and conform their own.

A writ of error also lies from all inferior *criminal* jurisdictions to the court of *King's Bench*, and from thence to the house of lords; and may be brought for notorious mistakes in the judgment or other parts of the record: as where a man is found guilty of perjury and receives the judgment of felony, or for other less palpable errors; such as any irregularity, omission, or want of form in the process of outlawry, or proclamations; the want of a proper *addition* to the defendant's name, according to the statute of *additions*; for not properly naming the sheriff or other officer of the court, or not duly describing where his county court was held; for laying an offence committed in the time of the late king, to be done against the peace of the present; and for many other similar causes, which (though allowed out of tenderness to life and liberty) are not much to the credit or advancement of the national justice. These writs of error to reverse judgments in case of misdemeanors, are not to be allowed of course, but on sufficient probable cause shewn to the attorney-general, and then they are understood to be grantable of common right, and *ex debito justitiæ*. But writs of error to reverse attainders in capital cases are only allowed *ex gratia*; and not

And from criminal jurisdictions.

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without express warrant under the king's sign manual, or at least by the consent of the attorney-general. These therefore can rarely be brought by the party himself, especially where he is attainted for an offence against the state: but they may be brought by his heir, or executor, after his death, in more favourable times; which may be some consolation to his family.

¹ Vern. 170.
175.

The effect of falsifying, or reversing an outlawry is, that the party shall be in the same plight as if he had appeared upon the *capias*: and, if it be before plea pleaded, he shall be put to plead to the indictment; if after conviction, he shall receive the sentence of the law: for all the other proceedings, except only the process of outlawry for his non-appearance, remain good and effectual as before. But when judgment, pronounced upon conviction, is *falsified* or *reversed*, all former proceedings are absolutely set aside, and the party stands as if he had never been at all accused, restored in his credit, his capacity, his blood, and his estates: with regard to which last, though they be granted away by the crown, yet the owner may enter upon the grantee with as little ceremony as he might enter upon a *disseisor*. But he still remains liable to another prosecution for the same offence: for, the first being erroneous, he never was in jeopardy thereby*.

² Hawk.
P. C. 462.

* See Chap. XXIV.

THE HISTORY OF THE

REIGN OF KING CHARLES THE FIRST

IN THE YEAR OF HIS AGE SIXTY

AND TWO IN THE YEAR OF HIS REIGN

SIXTY AND TWO

BY SAMUEL JOHNSON

IN TWO VOLUMES

LONDON

PRINTED BY A. MILLAR, IN ST. PAULS CHURCH-YARD

1742

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But without a judgment, or an award, in ^{1 Inst. 288.} the nature of a judgment, no writ of error lies; for the words of the writ are, *si judicium redditum sit*; and although in cases of outlawry, the judgment is given in the county court, which is no court of record, yet when the sheriff returns the exigent whereby the outlawry appears of record, or the outlawry be removed by a *certiorari*; then a writ of error lies.

In the register there are two writs of error:

The first, To remove the record.

The second, *Quod coram vobis residet.*

Writ of error, quod coram vobis residet.

Writ of error in B. R. to reverse a Fine, ^{3 Lev. 106.} upon which the transcript and proclamations are removed, and after the plaintiff becomes nonsuit; now another who hath cause may have a writ of error, *quod coram vobis residet.* ^{Rag & Bowley.}

There is another writ of error, *Tam in re-ditione judicii, quam in adjudicatione executionis*: which may be brought by bail upon a judgment recovered against them by *scire facias* *.

The writ of error is in nature of a commif- ^{Cr. Jac. 616.} sion, or rather a *certiorari*; it is not an action ^{Bethel et al} to recover any thing but to restore to what ^{v. Harris.} was lost, and to discharge of damages, and fines: therefore in error to reverse a judg- ^{Palmer. 151.} ment in ejectment, outlawry against one of ^{Bethel et al} the plaintiffs is no plea. ^{v. Parry.}

* See error in parliament.

Godb. 66. 68. The defendant hath no day in court by the writ of error, yet by the *scire facias* which is sued out upon it he hath a day.

It is to be directed to those before whom the judgment was given, as an *habeas corpus* is always directed to him that hath the custody of the body.

Hill. 649. If a writ of error be directed to the mayor, Spry v. Mil- aldermen, and recorder of Lanceson in Cornwall, lar. and the record is certified by the mayor, alderman, and deputy recorder; the court being held by letters patent: this is not well certified; for as much as this ought to be certified in the names of the judges of the court; and it doth not appear by the letters patent that the recorder had power to make a deputy.

2 Nel. Abr. For variance between the original writ and 714. 715. declaration, or want of an original, &c. and 721, &c. 728. where proceedings are so erroneous as not to be amended; for faults in verdicts, executions, &c. and where any thing material is omitted in a judgment; a writ of error lies, and the judgment shall be reversed. So where the stiles of inferior courts are wrong, or insufficiently named, &c. their judgments may be reversed.

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The defendant... in court by the
... of which... by the... which
and our... to be... a day.

It is to be directed on writ before which the
... will be given, as an... is al-
ways... to look that... the custody of
the... .

If a writ of error be granted to the...
... and... of... in...
and the... be... by the... after
... and... the court being held
by... present: this is not well certified
... as the... to be... in the
minutes of the... of the court; and I can
not appear by the... present that the re-
corder had power to make a deputy.

The... of the original writ and
declaration, or writ of... and
... of... is not to
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... shall be... So where the
... of... or...
... the... may be re-
voked.

C H A P. II.

Acts of parliament relating to writs of error.

5 *Edw. III. 2* & 10 *Edw. III. c. 2. 3.*

Authorize the bringing a writ of error from the palace court into the *King's Bench*.

14 *Edw. III. c. 6.* & 28 *Ed. III. c. 10.*

The mayor, sheriffs and aldermen of *London* to cause errors &c. to be redressed.

31 *Edw. III. c. 12.*

Erroneous judgments given in the exchequer to be corrected before the chancellor, and treasurer, barons, and justices.

9 *R. II. c. 8.*

Gives a writ of error to him in reversion, his heirs, or successors, upon judgment against tenant for life, &c. and by equity to him in remainder.

9 *Hen. V. c. 4.* & 4 *Hen. VI. c. 3.*

Also relate to writs of error.

8 *Hen. VI. c. 12* & 15.

The judges may reform defects in records, process, plea, warrant, writ, panel, or return; except in appeals, indictments of felony, or

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treason, outlawries of the same, and substance of proper names, surnames, and additions left out in original writs, exigents, and in others, writs of proclamation (contrary to 1 *H.* 5. 5. of additions.)

3 *Hen.* VII. c. 10.

Where any person bound by a judgment shall sue (before execution had) a writ of error to reverse it: if the judgment is affirmed, the writ discontinued, or the party become nonsuit, the person against whom such writ is sued shall recover his costs and damages.

32 *Hen.* VIII. c. 30.

Relates also to error.

34 *Hen.* VIII. c. 16.

Erroneous judgments before the justices of grand session in *Wales*, shall be reversed in *B. R.* in *England*, if in a plea real or mixed. But for personal matters, to be redressed before the president and counsel in *Wales*.

18 *Eliz.* c. 14.

Enacts that after verdict in any court of record, no stay or reversing judgment upon writs of error, for want of form in any writ, original or judicial, *count*, *declaration*, *plaint*, *bill*, *suit* or *demand*, or by reason of any imperfect or insufficient return of the sheriff, or other officer, warrant of attorney, or default in progress upon or after aid prier and voucher.

Extends

Extends not to felony or murder, nor to any writ, bill, action, or information, upon penal statutes.

23 *Eliz. c. 3.*

Fines and recoveries, and all matters concerning them may be inrolled, and shall not be reverfible for false latin, rafure, interlining, mifentering, mifreturn, or nonreturn of the fheriff, or any other matter of form, and not of fubftance.

27 *Eliz. c. 8.*

Enacts, " That where a judgment is given
 " in the *King's Bench*, in *debt*, *detinue*, *cove-*
 " *nant*, *accompt*, *action upon the cafe*, *ejectione*
 " *firmæ*, or *trespafs*, firft commenced there
 " (except where the queen is party,) the
 " *plaintiff* or *defendant*, may fue forth of the
 " chancery a writ of error, commanding the
 " chief juftice to caufe the record to be
 " brought before the juftices of the *Common*
 " *Pleas*, and barons of the exchequer, into
 " the exchequer chamber; which juftices
 " and barons, or any *fix* of them, (being of *Cr. Jac. 663*
 " the *coif*) fhall have power to examine, re-
 " verfe, or affirm, the faid judgment: other
 " than for error concerning the jurifdiction
 " of the *King's Bench*, or want of form in any
 " writ, return, plaint, declaration, or other
 " proceeding. And after fuch judgment is
 " reverfed or affirmed, the faid record fhall
 " be remanded, that the *King's Bench* may
 " proceed thereupon as fhall appertain: yet
 " fuch reverfal or affirmation fhall not be fo
 final

The Law and Practice

“ final but that the party who finds himself
 “ grieved, may still sue in parliament as be-
 “ fore.”

27 *Eliz. c. 9.*

Ordains that the act of 23 *Eliz. c. 3.* shall extend to fines and recoveries in *Wales*.

31 *Eliz. c. 1.*

The not coming of the chancellor shall not make a discontinuance of the error in the exchequer chamber.

And for error therein sued upon a judgment in the *King's Bench*, three of the justices, or barons, may *adjourn* it, and it shall be no discontinuance.

3 *Jac. 1.*

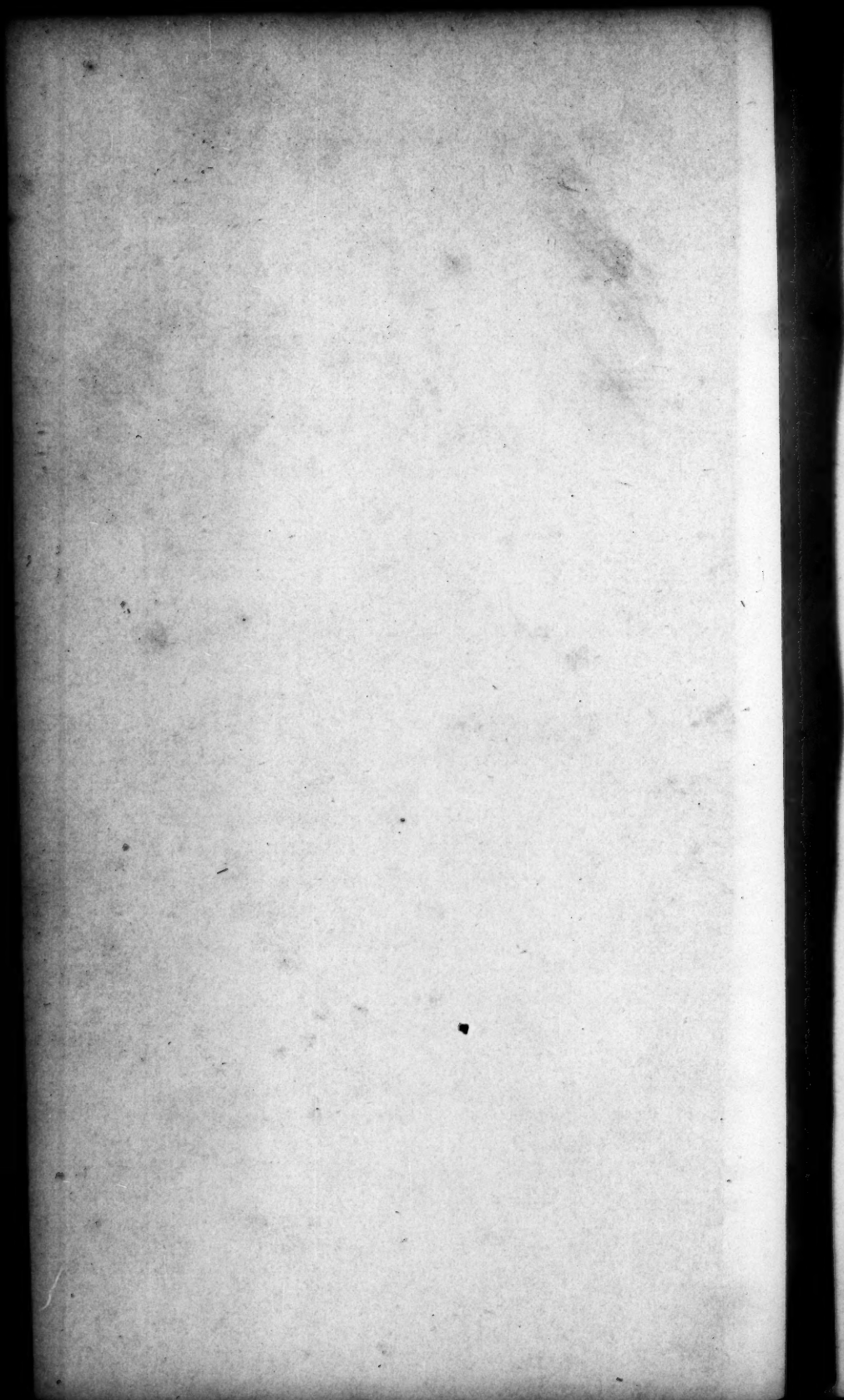
After verdict, execution shall not be stayed by writ of error, in actions of debt or contract, without bail in double the sum recovered, to pay (if judgment affirmed) *all* damages, &c.

*particularly
 in the Act*
 Gale & Till,
 4 Mod. 244.

It was held that an alderman who brings error shall not give bail, though, not excepted by the statute, neither shall he pay costs.

Judgment on bail bonds and bonds for performance of covenants are excepted.

This act extends not to executors or administrators, but ought to be literally taken.
Hill and Drew, 15 & 16 Car. 1.



21 Jac. I. c. 13.

After verdict judgment shall not be stayed or reversed upon a writ of error, for any variance in form only between the original writ, or bill, and the declaration, plaint, or demand, or for want of an averment of the party's life; so as it be proved he or they be in life, or awarding *venire*, *babeas corpus* or *distringas*, to a wrong office upon any insufficient suggestion; or that the *visne* was in some part misawarded, or sued out of more or fewer places than ought; so as some one place is rightly named, or for misnaming any of the jurors in the surname, or addition, so as *constat de persona*, or for want of a return to any of the writs, so as a panel is returned and annexed thereto; or that the officer's name is not set to the return, so as it is proved the writ was returned, or by reason that the plaintiff in *ejectione firmæ*, or in any personal action, being under age, appeared by attorney and the verdict passed for him. But extends not to felony, murder, treason, or to any writ, bill, action or information upon penal statutes.

13 Car. II. c. 2.

After verdict execution shall not be stayed by writ of error in an action of debt on 2 Ed. 6. for not setting out tithes, action on the case on *assumpsit*, *trover*, *covenant*, *delinque*, or *trespass*, unless bail given as directed by 3 Jac. 1. to pay costs and damages.

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16 Car. II.

The not coming of the lord chancellor and lord treasurer or either of them at the day of the return of any writ of error, by virtue of 31 Ed. 3. shall not abate or discontinue such writ; but if both or either chief justice or lord chancellor or lord treasurer come, V. 20 Car. 2. the suit shall proceed; provided judgment be not given unless both the lord chancellor and lord treasurer are present.

16 & 17 Car. II. c. 8.

(Stiled in 1 Vent. 100. an omnipotent act) Enacts that after verdict execution shall ~~not~~ be stayed or reversed for informality, in not producing any deed, administration, want of pledges, *vi et armis, contra pacem*, mistake of christian name or surname, sum of money, day, month, or year, in the record (*whereto the defendant might have demurred.*)

Nor execution impeded by a writ of error in any personal action or in dower or *ejectione firmæ*, (after verdict) unless bail shall be given.

Exceptions.

Error brought by executors, and administrators, popular actions, actions on penal statutes (except on 2 Ed. 6.) indictments, presentments, informations, and appeals, are excepted.

Writs of error from inferior courts are supersedeas's when allowed without bail, being left out of the above acts.

This

OF THE COURT OF COMMONS

This act shall be in full force from the first day of January next, and shall be construed accordingly.

And it is the duty of the Court of Commons to see that the same be duly observed, and that no person be allowed to contravene the same.

OF THE COURT OF COMMONS

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CH. II.

has been the subject of much discussion, and it is not possible to give a full account of the various theories which have been advanced. It is, however, generally admitted that the system is not a simple one, and that it is not possible to give a full account of the various theories which have been advanced. It is, however, generally admitted that the system is not a simple one, and that it is not possible to give a full account of the various theories which have been advanced.

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CH. V.

It is not possible to give a full account of the various theories which have been advanced. It is, however, generally admitted that the system is not a simple one, and that it is not possible to give a full account of the various theories which have been advanced. It is, however, generally admitted that the system is not a simple one, and that it is not possible to give a full account of the various theories which have been advanced.

of Writs of Error.

13

This act made perpetual by 22 & 23 Perpetual.
Car. 2. c. 4.

20 *Car. II. c. 4.*

Judgment may be given in a writ of error in the *Exchequer* in the presence of the lord keeper of the great seal, notwithstanding the vacancy of lord treasurer.

30 *Car. II. c. 6.*

An act made 17 *Car. 2. c. 8.* enacting that in all actions real, personal, or mixt, the death of either party between verdict and judgment, shall not be alledged for error, is made perpetual. 1 *Jac. 2. c. 17.*

Counsel prayed abatement of a writ of error on 16 & 17 *Car. 2.* by affidavit of *cestui que vies* death after judgment two days and by the act the damages are to be from the judgment affirmed in error, which was a term after-granted by the court. 3 *Keb. 205.* 218. 629. 630.

8 & 9 *W. III. c. 11.*

Relates to costs in error after judgment on demurrers, but dont extend to executors.

11 & 11 *W. III. c. 14.*

No fine or recovery, judgment in any real or personal action after 1st *May* 1699. shall be reversed for error unless commenced and prosecuted with effect, within twenty years after levying such fine, &c. but persons intitled to such writs of error being under age, covert

The Law and Practice

covert, *non compos mentis*, imprisoned, or beyond sea, when the title accrued, may bring error if twenty years are past, provided they do so within five years after their being of age, &c.

Strange 837. The court refused to quash a writ of error brought after twenty-nine years had elapsed since the judgment.

4 & 5 Ann. c. 16. par. 25.

Relates to costs.

9 Ann. c. 16. 5 G. 1. c. 13.

Writs of error varying from the original record, or defective, are amendable by the court.

And after verdict in any court of record, judgment shall not be stayed, or reversed, upon a writ of error, for any defect in form or substance, in any bill, writ, &c. or for variance in such writs from the declaration or other proceedings.

Strange 807.

Error returnable before judgment obtained, is such a fault as is not amendable by this act: but held by the last case that if *tested* before the judgment, it is good, being the usual course of practice for preventing and suspending executions.

March 140.

CHAP.

STATE OF NEW YORK

IN SENATE

January 10, 1894

REPORT

OF THE

COMMISSIONERS OF THE LAND OFFICE

IN RESPONSE TO A RESOLUTION PASSED BY THE SENATE, MAY 1, 1893

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CHAP. III.

Containing the proceedings under a writ of error.

In the Common Pleas.

THE plaintiff's attorney generally knows when the defendant intends to have a writ of error.

In such cases care should be taken to have costs allowed by the prothonotaries for suing out an original writ, which becomes necessary in all suits commenced in this court by common *capias ad respondendum*, when a writ of error is brought, in order to warrant the proceedings: the neglect whereof is attended with serious consequences.

These costs are to be added to those of the action before allowed on the taxation, and will be more or less in amount according to the *number of counts*, and the *damages* of the declaration; not the damages recovered by the judgment; but those of the declaration: for by the damages of the declaration alone, is always charged the king's fine, which increases proportionably as those damages are laid higher than 40 *l.* but if 40 *l.* exactly, or lower, no fine is payable.

Directions

The Law and Practice

Directions for suing out the writ of error.

A *præcipe* is to be made for the curfitor of that county in which the *venue* is laid; thus,

Precipe for
the writ of
error.

Middlesex. *Writ of error for John Gregory, at the suit of Ann Hook, on a judgment in case in the Common Pleas, of Easter term, 1779.*

Fen. attorney.

May 10, 1779.

The curfitors office is in chancery-lane. Pay for the writ of error, 13 s. and 6 d. unless wanted before the next seal; in which case, *extra* fees must be paid.

It must be allowed and served with suitable expedition; for until that is done, neither the person or property of the defendant are secure from being taken in execution.

This writ of error therefore must be taken to and left with the clerk of the errors, *Stephen Hough, Esq;* at the chambers of the chief justice of the Common Pleas, in ~~Serjeants inn.~~ *Southampton buildg Chancery lane*

The clerk of the errors takes down the names and abode of the attornies on both sides, to know where to send to them in the progress of the business.

Pay for allowing the writ of error in this court 2 l. 2 s. 6 d. upon payment whereof the clerk

THE HISTORY OF THE

REIGN OF THE

EMPEROR

OF THE

WEST

INDIES

BY

JOHN

WILKINS

OF THE

ROYAL

of Writs of Error.

17

clerk of the errors delivers the allowance in writing in this form;

Hooke
and
Gregory }

*I have allowed a writ of error in this cause,
this 16th day of May, 1779.*

S. Hough,
clerk of the errors.

Serve a copy on the plaintiff's attorney.

The safest way is for the defendant's attorney to take out a rule to be present at taxing costs, which is to be had at the secondaries office in the *Inner Temple*. Pay for ~~it~~ *6d* to serve a copy of it on the plaintiff's attorney, — to bespeak the writ of error without delay, lest the next seal should be lost; and to be ready to serve a copy of the allowance when he attends the taxation. *6/*

C H A P. IV.

The bail in error.

IF a writ of error be brought after verdict, he that brings the writ, or that is plaintiff in error, must in all cases find substantial pledges of prosecution or bail: (*Stat. 3. Jac. I. c. 8. 13 Car. II. c. 2. 16 & 17 Car. II. c. 8.* to prevent delays by frivolous pretences to appeal; and for securing payment of costs and damages which are now payable by the vanquished party in all, except a few particular instances, by virtue of the *stat. 3. Hen. VII. c. 10. 13 Car. II. c. 2. 8 & 9. W. III. c. 11. 4 & 5 Ann. c. 16.*

Rule E. 16.
Car. II.

If therefore it is aailable writ of error under any of the foregoing acts of parliament; bail must be given within four days next after the allowance thereof; otherwise the defendant in error is at liberty to levy an execution on the body or goods of the plaintiff, notwithstanding the existence of the writ of error, and the service of the allowance, as before mentioned.

The practice.

Take the bail to the clerk of the errors. He enters their names and residence in the bail-book kept by him, and gets them properly acknowledged before one of the judges. Notice hereof in writing must be served as in other cases of bail, only adding the words,

in

*The Clerk of the Court Mr. Smith
says otherwise.*

CHAP. IV.

The writ of error.

If a writ of error be brought after verdict,
it be that brings the writ, or that is plaintiff
in error, must in all cases first substantiate
that point of prosecution or bail. *Stat. 3 Jac. 1
c. 8. 17 Car. II. c. 2. 16 G. 17 Car. II. c. 8.*
to prevent delay by frivolous pretences to
appeal, and for securing payment of costs
and damages which are now payable by the
vanquished party in all, except a few par-
ticular instances, by virtue of the *stat. 2
Hen. VII. c. 10. 14 Car. II. cap. 3. 17 G. 17
18 G. 17. 14 G. 17. 17 G. 17.*

If therefore it is a habeas writ of error
upon any of the foregoing species of parties,
bail must be given within four days
after the allowance thereof, otherwise
the defendant in error is at liberty to levy
execution on the body or goods of the
plaintiff, notwithstanding the existence of the
writ of error, and the service of the allowance,
as before mentioned.

Take the bail in the writ of the error.
The court then moves and resides in the
bail book kept by him, and gets them pro-
perly acknowledged before one of the judges.
After hence is writing must be served as
in other cases of bail, only adding the word

of Writs of Error.

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in error, and making the defendant at law
the plaintiff in error, as follows :

In the Common Pleas.

In error.

John Gregory plaintiff.

Between

and

Ann Hook defendant.

Mr. Den,

Take notice that special bail was this day put
in for the plaintiff in this cause, upon the writ
of error brought by him, before the honourable
Mr. justice Gould, at his * house in Lincolns-
inn-fields, and their names are, John Friendly
of Duke-street, in the parish of Saint Margaret
Westminster, in the county of Middlesex,
Gentleman, and Richard Goodwill of Parlia-
ment-street, in the same parish and county,
Gentleman. Dated the 20th day of May,
1779.

Notice of
bail in error.

I am

Yours, &c.

R. Fen, attorney
for the plaintiff in error.

* Or, chambers in Serjeants Inn Chancery-lane.

5 W. & M.

Rule.

The defendant in error must except against the bail in error within 20 days next after notice thereof duly served, or the bail stand immoveable.

16 & 17 Car. II.

In ejectment, after verdict and error thereon, the plaintiff's own recognizance is sufficient, without any other surety: he becomes bound in double the value of one year's rent; and must be examined on taking his recognizance if he is worth so much; but if he finds bail, he need not be bound himself. *In dower* on error brought the plaintiff hath the like privilege.

As soon as the exception is entered against the bail, take out a rule from the clerk of the errors for better bail. Serve a copy, and if the bail do not justify themselves in four days after the service, the defendant in error will be at liberty to sue out his execution on the expiration of the said four days.

Rule for better bail.

Gregory
and
Hook

}

Unless the plaintiff in the writ of error puts in better bail within four days next after notice hereof given to the said plaintiff, or his attorney, execution will issue.

S. Hough.
clerk of the errors.

After

OF WRITS OF ERROR.

21

After this rule is received, the following notice of justification of the bail is to be returned.

To the Court of Error.

In error, John Gregory plaintiff.
and
Ann Hook defendant.

My Den.

I do notice that John Gregory, and Richard Goodwill, the bail put in for the plaintiff in this case on the writ of error brought by him, of whose names and places of abode you have had notice, will on the first day of the next Trinity term, justify themselves in this honourable court, as sufficient bail for the said plaintiff. Dated the 23rd day of May, 1779.

I am

Yours, &c.

R. Fen.

plaintiff's attorney.

If execution should issue for want of bail, or in default of justification, it only removes the superseas to the full execution: the writ of error stands as good as before in all other respects, and the plaintiff is still at liberty to proceed thereon to a reversal of the judgment if he has occasion, and if he succeeds he shall have restitution.

C 3

ALL

The Law and Practice

N. B. M.

The defendant in error shall except against the bail in error within 30 days next after the return of the writ, or the bail shall be forfeited.

Ch. II.

The defendant, after verdict and execution, shall be bound to give recognizance to the plaintiff, or other surety: he becomes liable to the value of one year's rent, and shall be liable to the taking his recognizance, or he is worth the price; but if he finds bail, he need not be bound himself. In default of bail brought the plaintiff hath the like privilege.

The law in the exception is entered against the bail, take out a rule from the clerk of the court for better bail. Get a copy, and if the bail do not return themselves in four days after the service, the defendant in error will be at liberty to set out his execution on the execution of the said four days.

Gregory
and
Hobbs

Unless the plaintiff in the writ of error puts in better bail within four days next after notice hereof given to the said plaintiff, or his attorney, execution will issue.

S. Hough.
Clerk of the Court.

of Writs of Error.

21

After this rule is received, the following notice of justification of the bail is to be returned.

In the Common Pleas.

In error. John Gregory plaintiff.
 Between *and*
 Ann Hook defendant.
Mr. Den,

Take notice that John Friendly, and Richard Goodwill, the bail put in for the plaintiff in this cause on the writ of error brought by him, of whose additions and places of abode you have had notice, will on, the first day of the next Trinity term, justify themselves in this honourable court, as sufficient bail for the said plaintiff. Dated the 25th day of May, 1779.

I am

Yours, &c.

R. Fen.

plaintiff's attorney.

If execution should issue for want of bail, or in default of justification, it only removes the supersedeas to the first execution: the writ of error stands as good as before in all other respects, and the plaintiff is still at liberty to proceed thereon to a reversal of the judgment if he sees occasion, and if he succeeds he shall have restitution.

§ 17. C. 34.

* The defendant in error must except against the bail in error within 20 days next after service thereof duly served, or the bail stand forfeited.

§ 18. C. 37 Car. II.

It is enacted, after verdict and a return thereon, the plaintiff's own recognizance is taken, the plaintiff and other surety, he becomes bound to make the value of one year's rent and so on. The defendant on taking his recognizance, if he is not to be paid; but if he finds bail, he must not be bound himself. In default of error brought the plaintiff hath the like privilege.

As soon as the exception is entered against the bail, take out a rule from the clerk of the court for better bail. Serve a copy, and if the bail do not justify themselves in four days after rat service, the defendant in error will be at liberty to set out his execution on the return of the said four days.

Plaintiff
in error

Gregory
and
Black

Unless the plaintiff in the writ of error puts in better bail within four days next after notice hereof given to the said plaintiff, or his attorney, execution will issue.

J. Hough.

Clerk of the Court.

Attest.

of Writs of Error.

21

After this rule is received, the following notice of justification of the bail is to be returned.

In the Common Pleas.

In error. John Gregory plaintiff.
Between and
Ann Hook defendant.

Mr. Den,

Take notice that John Friendly, and Richard Goodwill, the bail put in for the plaintiff in this cause on the writ of error brought by him, of whose additions and places of abode you have had notice, will on, the first day of the next Trinity term, justify themselves in this honourable court, as sufficient bail for the said plaintiff. Dated the 25th day of May, 1779.

I am

Yours, &c.

R. Fen.

plaintiff's attorney.

If execution should issue for want of bail, or in default of justification, it only removes the superseas to the first execution: the writ of error stands as good as before in all other respects, and the plaintiff is still at liberty to proceed thereon to a reversal of the judgment if he sees occasion, and if he succeeds he shall have restitution.

The Law and Practice

All persons who sue out writs of error must be careful to have the bail ready to justify in due time; for the judges will on no account allow an hour's further time for the justification than the usual course of practice admits of: because they say that bail on an arrest, and bail in error differ greatly: in the one, the plaintiff has proved the legality and justice of his demand; in the other it is doubtful in the beginning, and very often unjust, and not recoverable.

No objection lies against the same persons who became bail in the original action, being bail again in error, if able to justify as such. Unless it is in parliament, where new bail must be given.

Condition of
the recog-
nizance.

By the very nature of the recognizance, the bail cannot render to prison the plaintiff in error in discharge of themselves: for the condition is "*That the plaintiff in error shall prosecute his writ of error with effect; and if the judgment is affirmed, shall satisfy the debt, damages, and costs; together with such costs as shall be awarded by occasion of the delay of execution: or else that the bail shall do it for him.*"

CHAP. V.

OF THE COURTS OF COMMONS.

IN the next place it is incumbent on the
 attorney of the defendant in error to see
 that an original writ, or the writ of it will
 be made, that enter to the payment of costs
 in error, including the writ of error itself, or
 the writ of the judgment, if he proceeds;
 except in such special statutes and members
 of parliament by bill it is not necessary.

In order to the issuing this original, a pre-
 cept must be made for the return of the
 writ in which the writ is laid, thus:

Whereas, to wit, H. for that shall give
 satisfaction to preserve her self, her
 other sureties and safe pledges, *Recite in*
 the writ of *Westminster*, in the said county
 of *Middlesex*, yeoman, that he be before the
 court at *Westminster*, * on fifteen days
 after the day of *Easter*, to show, FOR
 THAT WHEREAS, the said *John* *Special*
 on the 11 day of *January* in the year of the reign
 of *Edward* 1770, at *Westminster* aforesaid, was
 appointed to be the *Agent* 21 of *lawful*
 agents of *Great Britain*, the said *John*, *Special*
 did, and did necessary, and shall, *Special*
 and attachant, before that time found

* For full return of this writ judgment is at

THE BAIL AND RETURN

All errors and omissions of error must be corrected before the bail ready, to justify in the return. The judges will on no account allow a return to be taken for the justification of the bail, unless the practice admits of it. It is not for that bail on an arrest, is to be taken after a return: in the one, the bail is taken on the legality and justice of the return; in the other it is doubtful in the return, and very much doubtful, and not returnable.

The obligation lies against the same persons who took the bail in the original action, being bail on a return, it is as just as such. Hence it is in a return, where new bail must be given.

By the very nature of the recognizance, the bail cannot tender to prison the plaintiff in return for discharge of themselves: for the condition is, *that the plaintiff in error shall prosecute and defend the return of error with effect; and if the return is affirmed, shall satisfy the debt, damages, and costs, together with just satisfaction, as shall be awarded in execution of the duty of execution.* It is not for that the bail shall be for

C H A P. V.

The Original Writ. *

IN the next place it is incumbent on the attorney for the defendant in error to sue out an original writ; or the want of it will subject his client either to the payment of costs in error, including the writ of error itself, or to a reversal of the judgment, if he proceeds; except in suits against attornies and members of parliament by bill it is not necessary.

In order to the issuing this original, a precept must be made for the cursitor of the county in which the *venue* is laid, thus:

Middlesex, to wit. If *Ann Hook* shall give you security to prosecute her suit, then put under sureties and safe pledges, *John Gregory*, late of *Westminster*, in the said county of *Middlesex*, yeoman, that he be before our justices at *Westminster*, * in fifteen days from the day of *Easter*, to shew, **FOR THAT WHEREAS**, the said *John* on the 1st day of *January* in the year of our Lord 1779, at *Westminster* aforesaid, was indebted to the said *Ann* in 30 l. of lawful money of *Great Britain*, for meat, drink, washing, lodging and necessaries, care, skill, diligence, and attendance, before that time found

Precipe for original.

Special declaration for the education of a young lady at a boarding School, by J. Lane, Esq;

* The first return of that term judgment is of.

* The attorney for deft in error sheweth as
Atty for Plt in error for consent to costs

The Law and Practice

*and provided for, and employed and bestowed on Mary Gregory the daughter of the said John, at his the said John's special instance and request; and being so indebted the said John in consideration thereof, afterwards, (to wit) on the same day and year aforesaid, at Westminster aforesaid, undertook and then and there faithfully promised the said Ann to pay her the said sum of money whenever afterwards he the said John should be thereto requested. AND WHEREAS ALSO, the said John afterwards, (to wit) on the same day and year aforesaid, at Westminster aforesaid, in consideration that the said Ann, at the special instance and request of the said John, had before that time found and provided for, and employed and bestowed on, the said Mary Gregory, the daughter of the said John, other meat, drink, washing, lodging, and necessaries, and other care, skill, diligence and attendance: undertook and then and there faithfully promised the said Ann to pay her so much money as she therefore reasonably deserved to have of the said John, whenever afterwards he the said John should be thereto requested. And the said Ann avers, that she therefore reasonably deserved to have of the said John other 30*l.* of like lawful money, that is to say, at Westminster aforesaid, whereof the said John afterwards (to wit) on the same day and year aforesaid there had notice. AND WHEREAS ALSO the said John afterwards to wit, on the same day and year aforesaid, at Westminster aforesaid, was indebted to the said Ann in other 30*l.* of like*

4

IN WITNESS WHEREOF

the said father, for want and labour, be-
cause that trade done and performed by the
said John, for the said Mary Gregory, the
daughter of the said John, in instructing and
teaching the said Mary the French and Eng-
lish tongues, writing, dancing, writing, and
counting, needlework, and good manners and be-
haviour, at the said John's special in-
stance and request, and being indebted,
the said John, in consideration thereof, at
the said day and year above said, and year
above said, at the said day and year above
said, and there faithfully promised the
said John to pay her the said last mentioned
sum of money whenever afterwards he the
said John should be thereto requested.

AND WHEREAS ALSO the
said John afterwards, (to wit) on the same
day and year above said, at the said day and
year above said, in consideration that the said John, at
the special instance and request of the said
John, had before that time done and per-
formed the said work and labour for the said Mary
Gregory, the daughter of the said John, in
instructing and teaching the said Mary the
French and English tongues, writing, dancing,
writing, count, needlework, and good man-
ners, and behaviour, and there faithfully promised the said John,
that he the said John would well and truly
pay to the said John the said money as the
said John reasonably deserved to have of the
said John, whenever afterwards he the said
John should be thereto requested, and the
said John avers, that the said money reasonably
deserved

like lawful money, for *work and labour* before that time done and performed by the said *Ann* for the said *Mary Gregory*, the daughter of the said *John*, in *instruēting and teaching the said Mary the French and English tongues, musick, dancing, writing, accompts, needle-work, and good manners and behaviour*, at his the said *John's* special instance and request: and being so indebted, the said *John*, in consideration thereof, afterwards (to wit) on the same day and year aforesaid, at *Westminster* aforesaid, undertook and then and there faithfully promised the said *Ann* to pay her the said last mentioned sum of money whenever afterwards he the said *John* should be thereto requested.

AND WHEREAS ALSO the said *John* afterwards, (to wit) on the same day and year aforesaid, at *Westminster* aforesaid, in consideration that the said *Ann*, at the special instance and request of the said *John*, had before that time *done and performed other work and labour for the said Mary Gregory, the daughter of the said John, in instruēting and teaching the said Mary the French and English tongues, musick, dancing, writing, accompts, needle-work, and good manners, and behaviour*: undertook and then and there faithfully promised the said *Ann*, that he the said *John* would well and truly pay to the said *Ann* so much money as she therefore reasonably deserved to have of the said *John*, whenever afterwards he the said *John* should be thereto requested: and the said *Ann* avers, that she therefore reasonably deserved

The Law and Practice

deserved to have of the said *John* other 30*l.* of like lawful money, that is to say, at *Westminster* aforesaid; whereof the said *John* afterwards, (to wit) on the same day and year aforesaid, there had notice. AND WHEREAS ALSO the said *John* afterwards, (to wit) on the same day and year aforesaid, at *Westminster* aforesaid, was indebted to the said *Ann* in other 30*l.* of like lawful money, *for diverse goods, wares, and merchandises, before that time bargained and sold by the said Ann to the said John, and delivered to the said Mary Gregory, the daughter of the said John, at his special instance and request.* And being so indebted the said *John* in consideration thereof afterwards (to wit) on the same day and year aforesaid, at *Westminster* aforesaid, undertook and then and there faithfully promised the said *Ann* to pay her the said last mentioned sum of money, whenever afterwards he the said *John* should be thereto requested. AND WHEREAS ALSO the said *John* afterwards, (to wit) on the same day and year aforesaid, at *Westminster* aforesaid, in consideration that the said *Ann*, at the special instance and request of the said *John*, *had before that time bargained and sold to the said John, and delivered to the said Mary Gregory, the daughter of the said John, diverse other goods, wares, and merchandises:* undertook and to the said *Ann* then and there faithfully promised, that he the said *John* would well and truly pay to the said *Ann* so much money as the said last mentioned goods

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goods, wares, and merchandises, at the time of the sale and delivery thereof, were reasonably worth, whenever afterwards he the said *John* should be thereto requested; and the said *Ann* in fact saith that the said last mentioned goods, wares, and merchandises, at the time of the sale and delivery thereof, were reasonably worth other 30*l.* of like lawful money, that is to say, at *Westminster* aforesaid, whereof the said *John* afterwards, (to wit) on the same day and year aforesaid, there had notice. AND WHEREAS ALSO the said *John* afterwards, (to wit) on the same day and year aforesaid, at *Westminster* aforesaid, was indebted to the said *Ann* in the further sum of 30*l.* of like lawful money, FOR money before that time paid, laid out, and expended by the said *Ann* for and to the use of the said *John*, at his special instance and request; and being so indebted, the said *John* in consideration thereof afterwards, (to wit) on the same day and year aforesaid, at *Westminster* aforesaid, undertook and then and there faithfully promised the said *Ann* to pay her the said last mentioned sum of money, whenever afterwards he the said *John* should be thereto requested. AND WHEREAS ALSO the said *John* afterwards, (to wit) on the same day and year aforesaid, at *Westminster* aforesaid, was indebted to the said *Ann* in the farther sum of 30*l.* of like lawful money, FOR money before that time lent and advanced by the said *Ann* to the said *Mary Gregory*, the daughter of
the

The Law and Practice

*the said John, at his special instance and request; and being so indebted, the said John in consideration thereof afterwards, (to wit) on the same day and year aforesaid, at Westminster aforesaid, undertook and then and there faithfully promised the said Ann to pay her the said last mentioned sum of money whenever afterwards he the said John should be thereto requested. NEVER- THELESS the said John, not at all regarding his said several promises and undertakings, in form aforesaid made, but contriving and fraudulently intending to deceive and defraud the said Ann in this behalf, hath not paid to the said Ann the said several sums of money, or either of them, or any part thereof, (although the said John afterwards, (to wit) on the same day and year aforesaid, and often since at Westminster aforesaid, hath been requested by the said Ann to pay her the same,) but to pay the same to the said Ann he the said John hath hitherto altogether refused, and still doth refuse, and the same are still unpaid: to the damage of the said Ann of 40*l.* as it is said.*

Indorse the attorney's name on the original writ when made out.

Lord Clarendon's orders in chancery.

Unless the original writ is issued before the expiration of the *vacation* next following that term which the judgment is of, the cur- sitor has no authority to sue it out afterwards, without an order from the master of the rolls; to obtain which the plaintiff in the original action

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That your petitioner being arraigned confessed guilty
and on a plea of guilty, in his own defence, in the
case of *Pier v. H. Miller*, against the above named
defendants, in a plea of guilty upon
a plea, in which the court is said to have
said your petitioner in *Miller* again said,
that his judgment in the last case, for
the reason, whereupon the said defendant
was a writ of error returned on the
ground of the *Hog 7* case, but no other pro-
ceedings have been had.

THE LADY AND DUTCH

the said John, at his special request and request, and being in witness, the said John in consideration thereof and in witness (to wit) on the first day and year aforesaid, at H. L. under aforesaid, undertook and then and there faithfully promised the said Ann to pay her the said last mentioned sum of money whenever afterwards he the said John should be therein requested. NEVE TALLESS the said John, not at all regarding his said several promises and undertakings in form aforesaid made, but contriving and fraudulently intending to deceive and defraud the said Ann in this behalf, hath responded to the said Ann the said several sums of money, or either of them, or any part thereof, although the said John afterwards, (to wit) on the same day and year aforesaid, and since aforesaid, hath been requested by the said Ann to pay her the same, but to pay the same to the said John, the said John hath hitherto, altogether refused, and still doth refuse, and the same are still unpaid to the damage of the said Ann of 40l. 0s 6d. is said.

Indorse the attorney's name on the original writ when made out.

Until the original writ is issued before the expiration of the vacation next following the term which the judgment is of, the clerk has no authority to use it out afterwards without order from the master of the rolls in which which the plaintiff in the original

action must present a petition to his honour, who will order it to be so upon payment of costs: and as the *vacation* between *Easter* term and *Trinity* term is the shortest of all the *vacations*, no time should be lost then, above all others, in doing this business, if the judgment is of *Easter* term, to avoid the consequences attendant upon the neglect thereof.

In Chancery.

Ann Hook *plaintiff.*

Between

and

John Gregory *defendant.*

To the right honourable the master of the rolls.

The humble petition of the plaintiff

Sheweth,

That your petitioner having commenced an action at law, in his majesty's court of *Common Pleas*, at *Westminster*, against the above named defendant, in a plea of trespass upon the case; in which the *venue* is laid in *Middlesex*: your petitioner in *Easter* term last, obtained final judgment in the said action, for 28l. 10s.; whereupon the said defendant brought a writ of error returnable on the morrow of the *Holy Trinity*, but no further proceedings have been had.

Petition to
the master of
the rolls.

That

The Law and Practice

That inasmuch as it is necessary that an original writ should be sued out of his majesty's high court of chancery to warrant the said proceedings; and the time for applying for the same in the ordinary course being expired; the curfitor of *Middlesex* has not now authority to issue the said writ without your honour's order for that purpose.

30th May 1779.

Be it so, and let the petitioner pay the defendant his costs in error, in case the defendant does not, after having had notice of this order, farther prosecute his said writ of error; and hereof give notice forthwith.

Your petitioner therefore humbly prays your honour to grant an order for the curfitor of *Middlesex*, to issue an original writ in the above cause, out of his majesty's high court of chancery, returnable in his majesty's court of *Common Pleas*, in 15 days from the day of *Easter* last past.

THO. SEWELL.

And your petitioner
shall ever pray, &c.

A copy of this petition and order must be served on the adverse attorney, pursuant to the master of the rolls's order, otherwise it will be contempt: after allowing the attorney two or three days to make his election whether to accept the costs in error or to prosecute the suit; if he declines to do so sooner, tender the costs in error; if he accepts thereof, then you are at liberty to nonpross the writ of error and proceed on the judgment directly: in order
where

THE HISTORY OF

THE HISTORY OF THE

THE HISTORY OF THE

S. Hough,

THE HISTORY OF THE

THE HISTORY OF THE

THE HISTORY OF THE

THE HISTORY OF THE

John Doe

and

Richard Roe

THE HISTORY OF THE

THE HISTORY OF THE

THE HISTORY OF THE

LETTER AND ORDER

That whereas it is manifest that
 the high court of chancery do warrant the
 writs of habeas corpus for applying to
 the same in the ordinary course being expected
 the court of chancery has not now authority
 to issue the said writ without your
 order for that purpose.

25th May 1779.

I am your most
 humble servant

As it is, and let the
 petitioner pay the
 costs by certificate
 sent down after
 the order of the
 court for the
 payment of costs
 and fees for
 forbearance.

honour to grant the
 writ for the cause
 of Mrs. J. J. to show
 original writ in the
 above cause out of
 the court's high court
 chancery, returned
 by the court
 Common Pleas, in
 days from the day
 Easter last past.

THO. BEWELL.

And your petition
 shall ever pray.

A copy of this petition and order shall
 be sent on the advice of the court, pursuant
 to the order of the court's order, otherwise
 be contrary to the order of the court, the attorney
 in that case, by making his election whether
 to pay the costs in whole or to procure
 the court to make an order, tender
 the costs, and the court thereon, they
 shall be in the court the writ of error
 shall be made directly: in the

of Writs of Error.

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whereunto, go to the clerk of the errors, who will enter the nonpross on the roll, thus:

Forasmuch as the said *John Gregory* hath not prosecuted the writ of error brought by him in this cause the said *Ann Hook* is at liberty to sue out execution, &c. * Form of non-
prossing writ
of error.

S. Hough,
Clerk of the errors.

Pay 6 s. 8 d. for entering this nonpross.

But if the attorney refuses to receive the costs, and says he will prosecute the writ of error, he abandons the costs to which he would have been intitled by a contrary conduct, and you must in that case deliver the petition, and order thereon, to the curfitor, who will complete the original; as soon as you get same from him, take it to the sheriff's office to be returned, for which pay one shilling. The sheriff indorses the return in this manner:

" Pledges to prosecute { *John Doe*
and
Richard Roe.

* There are no costs allowed to the defendant in error on nonpross *before* transcript in any court. See chapter the last.

The return.

"The within named John Gregory hath not
 "any thing in my bailiwick whereby he can
 "be attached.

Robert Peckham Esq;

"The answer of

and

Richard Clark Esq;

} Sheriff.

When the original is returned in this manner, it must then be taken to and finally filed with the *custos brevium* of the Common Pleas, which is the last thing to be done with it: his office is in *Brick Court* in the *Temple*; pay 5 s.

Unless the original be filed with the *custos brevium* before errors are assigned, the plaintiff in error may assign the want of an original for error, which will subject the defendant in error to the inconveniences before mentioned.

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C H A P. VI.

The transcript.

HAVING in the last chapter entirely completed the business of the original writ, we shall now move on with the suit to it's next stage, which is what is called *transcribing, or certifying the record,*

Writs of error are returnable either the first or last return day in term: on the return day the clerk of the errors will grant a rule for the plaintiff in error to certify the record in eight days: pay for it 4 s. and if the writ of error is returnable the first return of the term this rule may be had on the *essoyn* day of the term; serve a copy on the attorney on the other side: who before the eight days expire, generally leaves a guinea in part of the transcript money: and pays the rest in due time, to prevent a non-profs.

Hooke and Gregory.

The rule to certify record.

UNLESS the plaintiff in the writ of error brought in this cause certifies the record into the court of King's Bench, within eight days next after notice hereof to be given to him or his attorney, a nonsuit will be entered.

S. Hough,

Clerk of the errors.

D

At

The Law and Practice

At or before the service of this rule, the attorney for the defendant in error must cause the proceedings in the original action, as far as the plea, or interlocutory judgment, to be entered on the roll in a strong plain hand: in the *Common Pleas*, the warrants of attorney are filed on parchment at the *Warrant of Attorney Office*, in *Pump Court*, but never entered on the roll: they begin with the declaration at once, without writing any thing at all at the top, (*as the method is in B. R.*) not even the term, that being always put at the bottom by the prothonotaries.

When the roll is engrossed take it to the clerk of the judgments, Mr. *Lickbarrow*, whose office is in the *Common Pleas Office* on the left hand side of the *Prothonotaries*: it is his department to finish the roll by adding to it the *final* judgment from the *postea* on the record, or inquisition taken on the writ of inquiry, both which he hath the custody of. He will return back the roll in a day or two: pay nothing to him, his fees being taken care of by the prothonotaries when the final judgment is signed, in which they are always charged along with their own.

Take the roll (when done with by the clerk of the judgments) to the clerk of the errors to enable him to transcribe the record: which transcript, when ready, must be examined with the roll by the attorney for the defendant in error, who pays the clerk of the errors half a crown for the examination:
after

After which he delivers the roll to the defendant's attorney again, who must then go to the Prothonotary's office, and pocket the judgment, as the clerk will direct him; and finally leave the roll with them, or else with Mr. Broom, the clerk of the office, in *Chancery* in the Court, to be by him taken into the Treasury in *Chancery* Hall: but nothing on leaving the roll, which shows that two terms ago, all have the judgment; then, *2d*, *3d*, *4th*, *5th*, *6th*, *7th*, *8th*, *9th*, *10th*, *11th*, *12th*, *13th*, *14th*, *15th*, *16th*, *17th*, *18th*, *19th*, *20th*, *21st*, *22nd*, *23rd*, *24th*, *25th*, *26th*, *27th*, *28th*, *29th*, *30th*, *31st*, *32nd*, *33rd*, *34th*, *35th*, *36th*, *37th*, *38th*, *39th*, *40th*, *41st*, *42nd*, *43rd*, *44th*, *45th*, *46th*, *47th*, *48th*, *49th*, *50th*, *51st*, *52nd*, *53rd*, *54th*, *55th*, *56th*, *57th*, *58th*, *59th*, *60th*, *61st*, *62nd*, *63rd*, *64th*, *65th*, *66th*, *67th*, *68th*, *69th*, *70th*, *71st*, *72nd*, *73rd*, *74th*, *75th*, *76th*, *77th*, *78th*, *79th*, *80th*, *81st*, *82nd*, *83rd*, *84th*, *85th*, *86th*, *87th*, *88th*, *89th*, *90th*, *91st*, *92nd*, *93rd*, *94th*, *95th*, *96th*, *97th*, *98th*, *99th*, *100th*, *101st*, *102nd*, *103rd*, *104th*, *105th*, *106th*, *107th*, *108th*, *109th*, *110th*, *111th*, *112th*, *113th*, *114th*, *115th*, *116th*, *117th*, *118th*, *119th*, *120th*, *121st*, *122nd*, *123rd*, *124th*, *125th*, *126th*, *127th*, *128th*, *129th*, *130th*, *131st*, *132nd*, *133rd*, *134th*, *135th*, *136th*, *137th*, *138th*, *139th*, *140th*, *141st*, *142nd*, *143rd*, *144th*, *145th*, *146th*, *147th*, *148th*, *149th*, *150th*, *151st*, *152nd*, *153rd*, *154th*, *155th*, *156th*, *157th*, *158th*, *159th*, *160th*, *161st*, *162nd*, *163rd*, *164th*, *165th*, *166th*, *167th*, *168th*, *169th*, *170th*, *171st*, *172nd*, *173rd*, *174th*, *175th*, *176th*, *177th*, *178th*, *179th*, *180th*, *181st*, *182nd*, *183rd*, *184th*, *185th*, *186th*, *187th*, *188th*, *189th*, *190th*, *191st*, *192nd*, *193rd*, *194th*, *195th*, *196th*, *197th*, *198th*, *199th*, *200th*, *201st*, *202nd*, *203rd*, *204th*, *205th*, *206th*, *207th*, *208th*, *209th*, *210th*, *211st*, *212nd*, *213th*, *214th*, *215th*, *216th*, *217th*, *218th*, *219th*, *220th*, *221st*, *222nd*, *223rd*, *224th*, *225th*, *226th*, *227th*, *228th*, *229th*, *230th*, *231st*, *232nd*, *233rd*, *234th*, *235th*, *236th*, *237th*, *238th*, *239th*, *240th*, *241st*, *242nd*, *243rd*, *244th*, *245th*, *246th*, *247th*, *248th*, *249th*, *250th*, *251st*, *252nd*, *253rd*, *254th*, *255th*, *256th*, *257th*, *258th*, *259th*, *260th*, *261st*, *262nd*, *263rd*, *264th*, *265th*, *266th*, *267th*, *268th*, *269th*, *270th*, *271st*, *272nd*, *273rd*, *274th*, *275th*, *276th*, *277th*, *278th*, *279th*, *280th*, *281st*, *282nd*, *283rd*, *284th*, *285th*, *286th*, *287th*, *288th*, *289th*, *290th*, *291st*, *292nd*, *293rd*, *294th*, *295th*, *296th*, *297th*, *298th*, *299th*, *300th*, *301st*, *302nd*, *303rd*, *304th*, *305th*, *306th*, *307th*, *308th*, *309th*, *310th*, *311st*, *312nd*, *313th*, *314th*, *315th*, *316th*, *317th*, *318th*, *319th*, *320th*, *321st*, *322nd*, *323rd*, *324th*, *325th*, *326th*, *327th*, *328th*, *329th*, *330th*, *331st*, *332nd*, *333rd*, *334th*, *335th*, *336th*, *337th*, *338th*, *339th*, *340th*, *341st*, *342nd*, *343rd*, *344th*, *345th*, *346th*, *347th*, *348th*, *349th*, *350th*, *351st*, *352nd*, *353rd*, *354th*, *355th*, *356th*, *357th*, *358th*, *359th*, *360th*, *361st*, *362nd*, *363rd*, *364th*, *365th*, *366th*, *367th*, *368th*, *369th*, *370th*, *371st*, *372nd*, *373rd*, *374th*, *375th*, *376th*, *377th*, *378th*, *379th*, *380th*, *381st*, *382nd*, *383rd*, *384th*, *385th*, *386th*, *387th*, *388th*, *389th*, *390th*, *391st*, *392nd*, *393rd*, *394th*, *395th*, *396th*, *397th*, *398th*, *399th*, *400th*, *401st*, *402nd*, *403rd*, *404th*, *405th*, *406th*, *407th*, *408th*, *409th*, *410th*, *411st*, *412nd*, *413th*, *414th*, *415th*, *416th*, *417th*, *418th*, *419th*, *420th*, *421st*, *422nd*, *423rd*, *424th*, *425th*, *426th*, *427th*, *428th*, *429th*, *430th*, *431st*, *432nd*, *433rd*, *434th*, *435th*, *436th*, *437th*, *438th*, *439th*, *440th*, *441st*, *442nd*, *443rd*, *444th*, *445th*, *446th*, *447th*, *448th*, *449th*, *450th*, *451st*, *452nd*, *453rd*, *454th*, *455th*, *456th*, *457th*, *458th*, *459th*, *460th*, *461st*, *462nd*, *463rd*, *464th*, *465th*, *466th*, *467th*, *468th*, *469th*, *470th*, *471st*, *472nd*, *473rd*, *474th*, *475th*, *476th*, *477th*, *478th*, *479th*, *480th*, *481st*, *482nd*, *483rd*, *484th*, *485th*, *486th*, *487th*, *488th*, *489th*, *490th*, *491st*, *492nd*, *493rd*, *494th*, *495th*, *496th*, *497th*, *498th*, *499th*, *500th*, *501st*, *502nd*, *503rd*, *504th*, *505th*, *506th*, *507th*, *508th*, *509th*, *510th*, *511st*, *512nd*, *513th*, *514th*, *515th*, *516th*, *517th*, *518th*, *519th*, *520th*, *521st*, *522nd*, *523rd*, *524th*, *525th*, *526th*, *527th*, *528th*, *529th*, *530th*, *531st*, *532nd*, *533rd*, *534th*, *535th*, *536th*, *537th*, *538th*, *539th*, *540th*, *541st*, *542nd*, *543rd*, *544th*, *545th*, *546th*, *547th*, *548th*, *549th*, *550th*, *551st*, *552nd*, *553rd*, *554th*, *555th*, *556th*, *557th*, *558th*, *559th*, *560th*, *561st*, *562nd*, *563rd*, *564th*, *565th*, *566th*, *567th*, *568th*, *569th*, *570th*, *571st*, *572nd*, *573rd*, *574th*, *575th*, *576th*, *577th*, *578th*, *579th*, *580th*, *581st*, *582nd*, *583rd*, *584th*, *585th*, *586th*, *587th*, *588th*, *589th*, *590th*, *591st*, *592nd*, *593rd*, *594th*, *595th*, *596th*, *597th*, *598th*, *599th*, *600th*, *601st*, *602nd*, *603rd*, *604th*, *605th*, *606th*, *607th*, *608th*, *609th*, *610th*, *611st*, *612nd*, *613th*, *614th*, *615th*, *616th*, *617th*, *618th*, *619th*, *620th*, *621st*, *622nd*, *623rd*, *624th*, *625th*, *626th*, *627th*, *628th*, *629th*, *630th*, 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*742nd*, *743rd*, *744th*, *745th*, *746th*, *747th*, *748th*, *749th*, *750th*, *751st*, *752nd*, *753rd*, *754th*, *755th*, *756th*, *757th*, *758th*, *759th*, *760th*, *761st*, *762nd*, *763rd*, *764th*, *765th*, *766th*, *767th*, *768th*, *769th*, *770th*, *771st*, *772nd*, *773rd*, *774th*, *775th*, *776th*, *777th*, *778th*, *779th*, *780th*, *781st*, *782nd*, *783rd*, *784th*, *785th*, *786th*, *787th*, *788th*, *789th*, *790th*, *791st*, *792nd*, *793rd*, *794th*, *795th*, *796th*, *797th*, *798th*, *799th*, *800th*, *801st*, *802nd*, *803rd*, *804th*, *805th*, *806th*, *807th*, *808th*, *809th*, *810th*, *811st*, *812nd*, *813th*, *814th*, *815th*, *816th*, *817th*, *818th*, *819th*, *820th*, *821st*, *822nd*, *823rd*, *824th*, *825th*, *826th*, *827th*, *828th*, *829th*, *830th*, *831st*, *832nd*, *833rd*, *834th*, *835th*, *836th*, *837th*, *838th*, *839th*, *840th*, *841st*, *842nd*, *843rd*, *844th*, *845th*, *846th*, *847th*, *848th*, *849th*, *850th*, *851st*, *852nd*, *853rd*, *854th*, *855th*, *856th*, *857th*, *858th*, *859th*, *860th*, *861st*, *862nd*, *863rd*, *864th*, *865th*, *866th*, *867th*, *868th*, *869th*, *870th*, *871st*, *872nd*, *873rd*, *874th*, *875th*, *876th*, *877th*, *878th*, *879th*, *880th*, *881st*, *882nd*, *883rd*, *884th*, *885th*, *886th*, *887th*, *888th*, *889th*, *890th*, *891st*, *892nd*, *893rd*, *894th*, *895th*, *896th*, *897th*, *898th*, *899th*, *900th*, *901st*, *902nd*, *903rd*, *904th*, *905th*, *906th*, *907th*, *908th*, *909th*, *910th*, *911st*, *912nd*, *913th*, *914th*, *915th*, *916th*, *917th*, *918th*, *919th*, *920th*, *921st*, *922nd*, *923rd*, *924th*, *925th*, *926th*, *927th*, *928th*, *929th*, *930th*, *931st*, *932nd*, *933rd*, *934th*, *935th*, *936th*, *937th*, *938th*, *939th*, *940th*, *941st*, *942nd*, *943rd*, *944th*, *945th*, *946th*, *947th*, *948th*, *949th*, *950th*, *951st*, *952nd*, *953rd*, *954th*, *955th*, *956th*, *957th*, *958th*, *959th*, *960th*, *961st*, *962nd*, *963rd*, *964th*, *965th*, *966th*, *967th*, *968th*, *969th*, *970th*, *971st*, *972nd*, *973rd*, *974th*, *975th*, *976th*, *977th*, *978th*, *979th*, *980th*, *981st*, *982nd*, *983rd*, *984th*, *985th*, *986th*, *987th*, *988th*, *989th*, *990th*, *991st*, *992nd*, *993rd*, *994th*, *995th*, *996th*, *997th*, *998th*, *999th*, *1000th*, *1001st*, *1002nd*, *1003rd*, *1004th*, *1005th*, *1006th*, *1007th*, *1008th*, *1009th*, *1010th*, *1011st*, *1012nd*, *1013th*, *1014th*, *1015th*, *1016th*, *1017th*, *1018th*, *1019th*, *1020th*, *1021st*, *1022nd*, *1023rd*, *1024th*, *1025th*, *1026th*, *1027th*, *1028th*, *1029th*, *1030th*, *1031st*, *1032nd*, *1033rd*, *1034th*, *1035th*, *1036th*, *1037th*, *1038th*, *1039th*, *1040th*, *1041st*, *1042nd*, *1043rd*, *1044th*, *1045th*, *1046th*, *1047th*, *1048th*, *1049th*, *1050th*, *1051st*, *1052nd*, *1053rd*, *1054th*, *1055th*, *1056th*, *1057th*, *1058th*, *1059th*, *1060th*, *1061st*, *1062nd*, *1063rd*, *1064th*, *1065th*, *1066th*, *1067th*, *1068th*, *1069th*, *1070th*, *1071st*, *1072nd*, *1073rd*, *1074th*, *1075th*, *1076th*, *1077th*, *1078th*, *1079th*, *1080th*, *1081st*, *1082nd*, *1083rd*, *1084th*, *1085th*, *1086th*, *1087th*, *1088th*, *1089th*, *1090th*, *1091st*, *1092nd*, *1093rd*, *1094th*, *1095th*, *1096th*, *1097th*, *1098th*, *1099th*, *1100th*, *1101st*, *1102nd*, *1103rd*, *1104th*, *1105th*, *1106th*, *1107th*, *1108th*, *1109th*, *1110th*, *1111st*, *1112nd*, *1113th*, *1114th*, *1115th*, *1116th*, *1117th*, *1118th*, *1119th*, *1120th*, *1121st*, *1122nd*, *1123rd*, *1124th*, *1125th*, *1126th*, *1127th*, *1128th*, *1129th*, *1130th*, *1131st*, *1132nd*, *1133rd*, *1134th*, *1135th*, *1136th*, *1137th*, *1138th*, *1139th*, *1140th*, *1141st*, *1142nd*, *1143rd*, *1144th*, *1145th*, *1146th*, *1147th*, *1148th*, *1149th*, *1150th*, *1151st*, *1152nd*, *1153rd*, *1154th*, *1155th*, *1156th*, *1157th*, *1158th*, *1159th*, *1160th*, *1161st*, *1162nd*, *1163rd*, *1164th*, *1165th*, *1166th*, *1167th*, *1168th*, *1169th*, *1170th*, *1171st*, *1172nd*, *1173rd*, *1174th*, *1175th*, *1176th*, *1177th*, *1178th*, *1179th*, *1180th*, *1181st*, *1182nd*, *1183rd*, *1184th*, *1185th*, *1186th*, *1187th*, *1188th*, *1189th*, *1190th*, *1191st*, *1192nd*, *1193rd*, *1194th*, *1195th*, *1196th*, *1197th*, *1198th*, *1199th*, *1200th*, *1201st*, *1202nd*, *1203rd*, *1204th*, *1205th*, *1206th*, *1207th*, *120*

after which he delivers the roll to the defendant's attorney again, who must then go to the *Prothonotaries Office*, and docket the judgment, as their clerks will direct him; and finally leave the roll with them, or else with Mr. *Bolton*, the clerk of the effoins, in *Elm Court* in the *Temple*, to be by him taken into the *Treasury* in *Westminster-hall*: pay nothing on leaving the roll, unless more than two terms are past since the judgment; then 3s. 4d. but if it is within one term after judgment, the roll may be left with the prothonotaries, who do not charge any thing.

If the writ of error is returnable the first return of the term, the clerk of the errors takes that whole term to make the transcript. If the last day of term, he takes all the vacation following.

When the transcript is ready (which must be paid for by the plaintiff in error) the clerk of the errors delivers it over to Mr. *Heberden*, with the writ of error annexed: of whom bespeak a copy, which is called the paper book, as it will be wanted in the future stages of the cause: it is made on unstamped paper; —pay for same 4d. *per folio*.

The Law and Practice

C H A P. VII.

In the King's Bench.

The scire facias, quare executionem non.

THE transcript of the record being delivered over by the clerk of the errors in the *Common Pleas* to Mr. *Hobart*, the proper officer for that purpose, the cause is then removed into the *King's Bench*, where all further proceedings must thereafter be had.

After the completion of the transcript (but not before) the *scire facias quare executionem non*, must be issued by the defendant in error.

The writ.

GEORGE the third, by the grace of God of Great Britain, France, and Ireland, king, defender of the faith, &c. To the sheriffs of Middlesex greeting. Whereas Ann Hook lately in our court before Sir William de Grey, knight, and his companions, our justices of the Bench at Westminster, by our writ, and by the judgment of the same court, recovered against John Gregory, late of Westminster in your county, yeoman, 28l. 10s. for her damages ~~which~~ she had sustained, as well by occasion of the said John's not having performed certain promises and undertakings lately made by him to the said Ann, as for her costs and charges

Richard Pepper
ord Alvanley

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charges by her about her suit, in that behalf expended, whereof the said John is convicted, as by the record and proceedings thereof, which we lately caused to be brought into our court, before us, for certain causes of error, manifestly appears. And now on the behalf of the said Ann, we have received information, that although the said judgment be given in form aforesaid, yet execution of the said damages still remains to be made to her, wherefore the said Ann hath intreated us to provide her a proper remedy in this behalf; and we, being willing that what is just should be done on this occasion, command you, that by honest and lawful men of your bailiwick, you make it known to the said John, that he be before us on the morrow of All Souls, wheresoever we shall then be in England, to shew if he has or knows of any thing to say for himself why the said Ann ought not to have her execution against him of the damages aforesaid, according to the force, form, and effect of the said recovery, if it shall seem expedient to him so to do, and further to do and receive what our said court before us shall consider of him in this behalf, and have you there the names of those by whom you shall make it known to him, and this writ: *Witness William Earl of Mansfield, at Westminster, the 23d day of June, in the 19th year of our reign.*

~~Stormont and Way.~~

Error from an inferior court in which the proceedings are by bill, the *sci. fa.* and all subsequent proceedings must be returnable on

The Law and Practice

a day certain, except the palace court, from whence it is on a general return day.

If the transcript is completed the last day of term, the *sci. fa.* to bear *teste* the last day of that term, and to be returnable the first return of the subsequent term. If transcript is completed in the vacation, and delivered over the first day of term, the *sci. fa.* to bear *teste* the first day of that term.

Ingross *sci. fa.* on a ~~double twelve penny~~ ^{5/} stamped piece of parchment; to be signed by Mr. Heberden, ^{Mr. Heberden} and sealed. Make a precipe for Mr. Heberden, thus,

Middlesex, *scire facias quare executionem non*, for Ann Hook, defendant, at the suit of John Gregory, plaintiff in error, for 28 l. 10 s. damages in case.

Den.

If the writ of error is on a judgment of an inferior court, the *sci. fa.* must be directed to the judges thereof, thus—*To the mayor and bailiffs of the town of Northampton, greeting. Whereas Ann Hook, lately in our court of the town aforesaid, before you, without our writ, &c. command you, that by good and lawful men of the bailiwick of the town aforesaid, you make known to the said John, that he be before us on the morrow of All Souls, wheresoever, &c. All the rest to be the same as in the foregoing.*

Pay

OF WRITS OF HABEAS CORPUS

Pay for Signing 1 s. 8 d. sealing 7 d. then take it to the Sheriff's office for a warrant, which is the best way to have served, as it saves the delay of an *alias* *fi* *fa*.

Of course if *fi* *fa* is returned thereon, give a rule for judgment at the return of the *fi* *fa*.

But if two writs issue with *mon* returned, the rule for judgment must not be given until the return of the *alias* *fi* *fa* *stat.* (no rule on the *fi* *fa*.)

In the King's Bench.

John Gregory plaintiff,

and

Ann Hook defendant.

Rule for judgment.

In error.

Rule for judgment in a *fi* *fa* as *quere* executionem non.

D^{ca}, attorney.

4th November, 1779.

This rule is to be given at Mr. *Gregory*, the clerk of the rules, in *Sinclair's* Inn, by *Mr. D.* and it expires in four days.

Indeed this rule on the *fi* *fa* must on no account be omitted, as much depends upon it. If the plaintiff in error assigns no errors at all before its expiration, the defendant is at full liberty to sue out and have execution the next day after the rule is put, without de- manding, or having any rule for an assign- ment.

D.

Pay for signing 1 s. 8 d. sealing 7 d. then take it to the sheriffs office for a warrant, which it is the best way to have served, as it saves the delay of an *alias sci. fa.*

Of course if *scire feci* is returned thereon, give a rule for judgment at the return of the *sci. fa.*

But if two writs issue with *nibils* returned, the rule for judgment must not be given until the return of the *alias scire facias*. (no rule on the first.)

In the King's Bench.

John Gregory plaintiff,

and

Ann Hook defendant.

Rule for judgment.

} In error.

Rule for judgment on a *scire facias* quare executionem non.

Den, attorney.

4th November, 1779.

This rule is to be given at Mr ^{and} ~~Campers~~, the clerk of the rules, in Symond's Inn, pay 1 s. 3 d. it expires in four days.

Indeed this rule on the *sci. fa.* must on no account be omitted, as much depends upon it; for if the plaintiff in error assigns not errors at or before it's expiration, the defendant is at full liberty to sue out and levy execution the next day after the rule is out, without demanding, or serving any rule for an assign-

The Law and Practice

ment of error. The end of the *sci. fa.* is to warn him to shew why there should not be execution of the judgment: the assignment of errors is understood to be the cause shewn why execution ought not to be suffered; which assignment of errors therefore must be ready to be delivered against the time the rule on the *sci. fa.* expires; otherwise it is supposed he submits to the condition, and there is no relief if the execution once *regularly* issues.

I regret any service
missed

C H A' P. VIII.

The assignment of errors.

IF the defendant in error should levy execution in default of an assignment of errors, he has then no costs in error, but he may afterwards proceed to *nonpross* the writ of error (notwithstanding the levy of the execution) and recover costs: which must be done just in the same manner as if execution had *not* been levied: thus,

Get a rule from ^{*her masters*} ~~Mr. Benton~~, at the King's Bench office, to assign errors on record, enter same at ^{*the office of the clerk*} ~~Mr. Cowper~~, serve a copy on the attorney on the other side, and if no errors be assigned in due time, the defendant may sign *nonpross*, and have costs. 3 H. VIII.

Hook and Gregory.

Rule to assign errors.

Monday on the morrow of Saint Martin, to assign errors on record.

Entered.

The plaintiff in error being served with this rule, he may assign error if he thinks proper, although the execution should (or should not) have been *executed*: and if the errors assigned have foundation sufficient to reverse the judgment, he shall have either restitution of the damages

The Law and Practice

damages (if levied) or a reversal of the judgment, if the damages were not levied,

If the plaintiff in error delivers no assignment of errors, at or before the expiration of the rule to do so, the defendant must enter the *sci. fa.* on the roll (to follow the transcript) and sign judgment thereon at the *King's Bench* office, and sue out execution.

If only one *sci. fac.* with *scire feci* returned thereon, the rolls and entry must be of the same term which the *sci. fa.* is of; if two issue, then of that term which the first *sci. facias* is of, with an award of the second, and of execution, in this manner;

The entry of a nonpross after scire facias quare executionem non, in error for want of assigning error.

Afterwards, (to wit,) on *Monday next after eight days of Saint Martin*, in this same term, before our lord the king at *Westminster*, comes the said *Ann*, by her attorney aforesaid, and says that execution of the judgment aforesaid still remains to be made unto her; therefore she prays the writ of the lord the king, to be directed to the sheriff of the county of *Middlesex* aforesaid, that he make known to the said *John*, to be before the said lord the king, wheresoever, &c. to shew if any thing he has or knows to say for himself why the said *Ann* ought not to have execution of her damages, costs and charges aforesaid, according to the form and effect of the judgment aforesaid,

THE FIRST PART OF THE HISTORY OF THE
REIGN OF HENRY THE SECOND

IN THE FIRST PART OF THE HISTORY OF THE
REIGN OF HENRY THE SECOND, THE AUTHOR
HAS TAKEN NOTICE OF THE DEATH OF
THE KING, AND OF THE STATE OF THE
COUNTRY AT THAT TIME.

IN THE SECOND PART OF THE HISTORY OF THE
REIGN OF HENRY THE SECOND, THE AUTHOR
HAS TAKEN NOTICE OF THE DEATH OF
THE KING, AND OF THE STATE OF THE
COUNTRY AT THAT TIME.

IN THE THIRD PART OF THE HISTORY OF THE
REIGN OF HENRY THE SECOND, THE AUTHOR
HAS TAKEN NOTICE OF THE DEATH OF
THE KING, AND OF THE STATE OF THE
COUNTRY AT THAT TIME.

IN THE FOURTH PART OF THE HISTORY OF THE
REIGN OF HENRY THE SECOND, THE AUTHOR
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COUNTRY AT THAT TIME.

IN THE FIFTH PART OF THE HISTORY OF THE
REIGN OF HENRY THE SECOND, THE AUTHOR
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THE KING, AND OF THE STATE OF THE
COUNTRY AT THAT TIME.

IN THE SIXTH PART OF THE HISTORY OF THE
REIGN OF HENRY THE SECOND, THE AUTHOR
HAS TAKEN NOTICE OF THE DEATH OF
THE KING, AND OF THE STATE OF THE
COUNTRY AT THAT TIME.

IN THE SEVENTH PART OF THE HISTORY OF THE
REIGN OF HENRY THE SECOND, THE AUTHOR
HAS TAKEN NOTICE OF THE DEATH OF
THE KING, AND OF THE STATE OF THE
COUNTRY AT THAT TIME.

IN THE EIGHTH PART OF THE HISTORY OF THE
REIGN OF HENRY THE SECOND, THE AUTHOR
HAS TAKEN NOTICE OF THE DEATH OF
THE KING, AND OF THE STATE OF THE
COUNTRY AT THAT TIME.

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aforesaid, and it is granted to her, &c. by which it is commanded to the sheriff aforesaid that by good and lawful men of his bailiwick he make it known to the said *John* that he be before the lord the king, (*the return of the scire facias quare, &c.*)

Wheresoever, &c. to shew in form aforesaid, if &c. and further, &c. the same day is given to the said *Ann* &c. at which day the said *Ann*, by her attorney aforesaid, comes before our lord the king at *Westminster*, and offers herself against the said *John*, in the plea aforesaid, and the sheriff (to wit) *Thomas Wright, Esq;* and *Evan Pugh, Esq;* sheriff of the said county of *Middlesex*, returns *, that by virtue of the said writ to him directed, by *James Strongarm Scire feci.* and *William Cbariot*, good, &c. he has given notice to the said *John* to appear, &c. to shew cause, &c. as by that writ he was required : and the said *John*, being solemnly called, doth

* *Two nibils* — that the said *John* hath not any thing in his bailiwick where or by which he can give him notice, as by that writ he was commanded, nor is the said *John* found in the same, and the said *John*, being solemnly called, doth not come. Therefore as before the said sheriff is commanded, that by good, &c. he make known to the said *John*, that he be before our lord the king, (*the return of the second scire facias quare executionem non.*)

Wheresoever, &c. to shew in form aforesaid, if, &c. and further, &c. the same day is given to the said *Ann*, there, &c. At which day the said *Ann* by her attorney aforesaid, comes before our lord the king at *Westminster*, and offers herself against the said *John*, and the sheriff, as before, returns that the said *John* hath not any thing, &c. nor is the said *John* found, and the said *John*, being solemnly called, doth not come.

not

Day given to
assign errors.

Plaintiff in
error makes
default.

Judgment
signed day
of 1779.

Mercy.

not come, but makes default; and hereupon the said *Ann* says, that the said *John* hath assigned no error or errors in the record and proceedings afore said, or in giving the judgment afore said: therefore a day is given to the parties afore said, to come before our lord the king, on *Monday on the morrow of Saint Martin*, wheresoever, &c. that is to say, for the said *John* to assign error or errors in the record and proceedings afore said, or in giving the judgment afore said. At which day, before our lord the king at *Westminster*, comes the said *Ann*, by her attorney afore said, and the said *John*, being solemnly called, doth not come, but again makes default, nor has he farther prosecuted the said writ of error against the said *Ann*.] Therefore it is considered, that the said *Ann* do recover against the said *John*, [as well] her damages afore said, [as also] 7*l.* adjudged to her by the court of our lord the king now here, according to the form of the statute in such case made and provided, for her damages, costs, and charges which she has sustained by occasion of the delay of execution of the judgment afore said, by means of the prosecution of the said writ of error, which damages, in the whole, amount unto 35*l.* 10*s.* and that the said *Ann* have execution thereof, &c. and the said *John*, in mercy, &c.

Few parties, however, after sustaining the expence of transcribing, will be found to stop short at this part of the journey they have begun, and especially if real error should exist; but instead thereof will deliver an assignment of

Leave out this 6 Term
Rep: 367

Done

[Faint, illegible handwriting]

70-41

of errors to prevent these advantages being taken of them. Therefore we shall now give the different forms of such assignments as are now in use, as well as of the other pleadings; including the forms of the affirmance, reversals, &c.

The assignment of errors, that there is no original writ filed of record.

In the King's Bench.

Michaelmas term, in the 20th year of the reign of king George the third.

Gregory } **Afterwards**, (that is to say,) on
against } *Monday on the morrow of Saint*
Hook. } *Martin, in this same term, before*
our lord the king at Westminster, comes
the said John Gregory, by Richard Fen his
attorney, and says, that in the record
and 'proceedings afore said, and also in
the giving of the judgment afore said, there
is manifest error in this, (to wit,) that the
declaration afore said, and the matters there-
in contained, are not sufficient in law for the
said Ann to have and maintain her afore-
said action thereof against the said John.
There is also error in this, (to wit) that by
the record afore said, it appears, that the said
John was attached to answer to the said Ann
in the plea afore said, yet no original writ
between the parties afore said, in the plea
afore said, is filed of record, nor remains of
record, in the said court of the said lord
the king of the Bench, at Westminster afore-
said :

The Law and Practice

said: therefore in that there is manifest error. There is also error in this, that it appears by the record aforesaid, that the judgment aforesaid, in form aforesaid given, was given *for* the said Ann *against* the said John: whereas by the law of the land the said judgment ought to have been given *for* the said John *against* the said Ann. *And the said John prays a writ of the lord the king, to be directed to the custos brevium of the said court of the Bench at Westminster, to certify to the said lord the king the truth of the same, and it is granted to him, &c.* and the said John prays that the judgment aforesaid, for the errors aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and that he may be restored to all things which he hath lost by occasion of the said judgment, &c.

A. CHAMBRE.

This assignment of errors must be signed by counsel, and engrossed on a treble penny stamp, and delivered (not left in the office) to the attorney for the defendant in error.

The plaintiff in error instead of the above may assign the want of a warrant of attorney, or any other error that may really exist in the judgment or proceedings; and if there is no real error to be discovered, he can assign what are called the *general errors*, which is the cheapest way of proceeding for the client.

We shall first go on with the joinder in error to this assignment, as to the want of an *original writ*, and when that is done with, and the judgment affirmed, we shall superadd other useful precedents of different assignments of error; *viz.* one assigning the want of a warrant of attorney, and others consisting of the general errors. Likewise assignments of error in parliament, and other special matters, to make our work as extensive as possible, will be found in their proper places. But previous to the joinder in error the matters contained in the next chapter must be properly discussed.

CHAP.

C H A P. IX.

The writ of certiorari.

IT lies on the defendant to force the plaintiff to return the writ of *certiorari*, which is to be done in this manner:

Mr. *Benton*, at the *King's Bench* office, will, on the back of the draught of the *scire facias quare executionem non*, give a rule to return the *certiorari*, which must likewise be entered with the clerk of the rules, and served in the same manner as the rule for assigning errors was done.

Hook and Gregory.

*Monday in eight days of Saint Martin to
return the writ of certiorari.*

Entered.

The plaintiff in error, on service of this rule, must make out the *certiorari*, and leave it with the *custos brevium* of the *Common Pleas*. The writ, together with the return made by the *custos brevium*, are to be taken to Mr. *Way's* office in *Portugal Street*, or, if in term time, left in the *King's Bench* treasury, *Westminster-hall*.

The defendant's attorney searches for it there, and, if returned, bespeaks a copy of the writ and return, which is made on a double six-penny stamp,

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The certiorari to certify the original writ.

GEORGE the third, by the grace of God, of Great Britain, France, and Ireland, king, defender of the faith, &c. To our right trusty and well beloved *John Browning, Esq;* *Sir Robert Eden, Bart.* *Frederick Young, and Edward Gore, Esqs;* holding the office of keeper of the writs, rolls, and records, of our court of the *Bench*, greeting: We being willing, for certain causes, to be certified, whether any *original writ*, between *Ann Hook*, and *John Gregory, late of Westminster, in the county of Middlesex, yeoman*, in a plea of trespass on the case, be filed in your custody or not; do command you, that you search our *original writs*, directed to the sheriff of *Middlesex*, and which are filed of record in your custody, of *Easter term, in the 19th year of our reign*. And what you shall find therein of an original writ, between the parties aforesaid, of the plea aforesaid, you certify to us without delay, wheresoever we shall then be in *England*, together with the return and indorsement thereof, as fully as the same remains in your custody, and this writ. Witness *William Earl of Mansfield*, at *Westminster*, the 6th day of *November*, in the 20th year of our reign.

Stormont and Way.

The Law and Practice

The answer of John Browning, Esq; Sir Robert Eden, Bart. Frederick Young, and Edward Gore, Esqs; holding the office of keeper of the writs, rolls, and records within named.

“ BY VIRTUE of this writ to us directed, we
 “ do hereby certify to the lord the king with-
 “ in named, that we have searched the origi-
 “ nal writs directed to the sheriff of *Middle-*
 “ *sex*, that are in our custody, filed of record,
 “ of *Easter term*, in the 19th year of the reign
 “ of the said king; and that there is an origi-
 “ nal writ between the parties within-named,
 “ in a plea of trespass on the case, directed
 “ to the sheriff of *Middlesex*, in our custody,
 “ filed of record, of the term aforesaid: the
 “ tenor of which said original writ, with
 “ the return and indorsement thereof, as fully
 “ as the same remains in our custody, filed
 “ of record, we do hereby certify to the said
 “ lord the king, as appears by the schedule
 “ hereunto annexed, as we are within com-
 “ manded”.

Here follows *verbatim*, a copy (*fac simile*) of the original writ which was made out by the curfitor, and the indorsement thereon made by the sheriff, as filed with the *custos brevium* in CHAP. V.

If the *certiorari* is not returned and filed by the time appointed by the rule, the defendants may join in error, by pleading *in nullo est erratum*, and enter a *non misit breve* on re-
 4 cord,

and, without taking any notice of the de-
fendant; and the assignment of error, is void.

If a wrong original is certified, or that there is
an original, the defendant may suggest before
the court of common pleas, that there is an
original of another term, viz. *Michaelmas*, or
Trinity, when a *coramari* Writ to the clerk
is sent, to certify same, and another to the
justices of the Common Pleas to certify
the continuance.

If a wrong original is certified of the same *Term*,
from the *placito* is of, the defendant may sug-
gest there is a *right* original, even of the same
Term, and which both are before the court,
they will apply the record to that which is
right.

cord, without taking any notice of the deminution; and the assignment of error, is void.

If a wrong original is certified, or that there is no original, the defendant may suggest before in *nullo est erratum* pleaded, that there is an original of another term, viz. *Michaelmas*, or *Hilary*: when a *certiorari* issues to the *custos brevium* to certify same, and another to the chief justice of the *Common Pleas* to certify the continuances.

1 Cr. 271.

281.

2 Cr. 185.

479. 654.

674.

If a *wrong* original is certified of the same term the *placita* is of, the defendant may suggest there is a *right* original, even of the same term; and when both are before the court, they will apply the record to that which is right.

Hard. 200.

C H A P. XI.

The joinder in error.

In error.

Michaelmas term in the 20th year of the reign of king George the third.

Stormont and Way.

Hook and } *WHICH* said writ of *certiorari*,
 Gregory. } so prayed and granted, follows
 in these words, to wit, *George the third*, by the
 grace of God, of *Great Britain, France, and Ire-*
land, king: (*proceed verbatim with the writ of*
certiorari, in CHAP. IX, to the end, Stormont
and Way.) which said keeper of the writs, rolls,
 and records, returned and certified unto our said
 lord the king, that by virtue of the said writ
 of *certiorari*, they had searched the original
 writs, directed to the sheriff of *Middlesex*, in
 their custody, filed of record, of *Easter* term,
 in the nineteenth year of the reign of our
 said lord the king, *and that there was an ori-*
ginal writ between the parties in the said writ
of certiorari named, in a plea of trespass on
 the case, directed to the sheriff of *Middlesex*,
 in their custody, filed of record, of the term
 aforesaid; the tenor of which said original
 writ, together with the return and indorse-
 ment thereof, as fully as the same remained
 in their custody, filed of record, they the said
 keeper of the writs, rolls, and records afore-
 said, thereby certified to the said lord the
 king,

Ve ifying the
 original writ.

King, as appeared by the schedule thereunto annexed, as the said keeper was in the said writ of certiorari commanded. And which said schedule, so annexed to the said writ of certiorari, follows in these words, to wit, Every the third, by the grace of God, of Great Britain, France, and Ireland, King, defender of the faith, &c. To the Sheriff of Middlesex greeting. If Ann Hook shall give you authority to prosecute her suit, then put under herseals and safe pledges, John Gregory, late of Westminster, in your county, yeoman, that he be before our justices at Westminster, on fifteen days from the day of Easter, to then, For that whereas (as on with the original writ in Case No. to the said, then add the Sheriff's indenture, viz.) safe pledges to prosecute, John Doe, and Richard Roe; the within named John Gregory hath not any thing in my bailwick whereby he can be attached; the answer of Henry Peckham, esq; and Richard Clark esq; Sheriff, Dec. Attorney. Which said writ of certiorari, together with the return of the same, among the records without day, of Easter term aforesaid, is filed. And hereupon afterwards to wit, Saturday next, at eight days of St. Martin, in Michaelmas term, of the twentieth year of the reign of our said lord the King, the said Ann Hook, by John Doe her attorney, freely comes here into court, and says, that there is no error either in the record and proceedings aforesaid, or in giving the judgment aforesaid, and she prays that the court of the said lord the King now here, may proceed to examine, as well the said record and proceedings aforesaid, as the mat-

king, as appeared by the schedule thereunto annexed: as the said keeper was in the said writ of *certiorari* commanded. And which said schedule, so annexed to the said writ of *certiorari*, follows in these words, to wit; George the third, by the grace of God, of *Great Britain, France, and Ireland*, king, defender of the faith, &c. To the sheriff of *Middlesex* greeting. If *Ann Hook* shall give you security to prosecute her suit, then put under sureties and safe pledges, *John Gregory*, late of *Westminster*, in your county, yeoman, that he be before our justices at *Westminster*, in fifteen days from the day of *Easter*, to shew, For that whereas (go on with the original writ in CHAP V. to the end, then add the sheriff's indorsement, viz.) Pledges to prosecute, *John Doe*, and *Richard Roe*; the within named *John Gregory* hath not any thing in my bailiwick whereby he can be attached; the answer of *Robert Peckham*, esq; and *Richard Clark* esq; sheriff, *Den. Attorney*. Which said writ of *certiorari*, together with the return of the same, among the records without day, of *Easter* term aforesaid, is filed. And hereupon afterwards to wit, *Saturday* next after eight days of *St. Martin*, in *Michaelmas* term, in the twentieth year of the reign of the said lord the king, the said *Ann Hook*, by *John Den* her attorney, freely comes here into court, and says, that there is no error either in the record and proceedings aforesaid, or in giving the judgment aforesaid, and she prays that the court of the said lord the king now here, may proceed to examine, as well the record and proceedings aforesaid, as the mat-

ters aforesaid for error assigned, and that the judgment aforesaid, in form aforesaid given, Continuance. may be in all things affirmed. But because the court of the said lord the king now here is not yet advised what judgment to give of and upon the premisses, a day is given therefore to the parties aforesaid, to come before the said lord the king on *

where-
soever the said lord the king shall then be in *England*, to hear the judgment aforesaid, for that the court of the said lord the king now here is not yet advised thereof, &c.

W. Baldwin.

After the argument, the judgment of the court, either for affirmance or reversal, must be entered up upon the rolls, to follow the joinder in error, in this place. For forms thereof see the end of the next chapter, and the index.

This joinder in error must be engrossed fair on treble penny stamps, signed by counsel, and delivered to the attorney for the plaintiff in error, who is to be paid a fee of half a crown on the delivery.

* The day mentioned in the rule for confilium.

CHAP. XII.

The Consilium.

Consilium must then be employed to move
for a consilium.

Saturday next after eight days of St. Martin
in the sixth year of King George the third.

Monday the day next after eight days of St. Martin
in the sixth year of King George the third. *consilium.*
St. Martin is appointed to move
the consilium for both parties. Upon the
motion of Mr. Babbalan.

BY THE COURT.

ORDER A copy of this rule on the opposite
stationary. After which the whole pro-
ceedings in both courts, are to be engrossed on
King's Bench rolls, from the beginning to the
end, which must be entered and docketed
with the clerk of the judgments, at the King's
Bench Office, and the rolls afterwards taken
by Mr. Ayles, the clerk of the papers, in
Hind's box, to be marked and entered for
the statements, and then to be left with Mr.
Wag, at his office, or else in the King's Bench
Treasury, Westminster-Hall, ready to be pro-
duced in court.

On these King's Bench rolls the whole pro-
ceedings in both courts must be engrossed,
as we have mentioned before. Begun with
the writ of error null, engrossed the whole of

The Law and Practice

test afforded for error assigned, and that judgment afforded, in form aforesaid given. *Concessio* may be in all things affirmed. But because the court of the said lord the king now here is not yet advised what judgment to give and upon the premises, a day is given therefore to the parties aforesaid, to come before the said lord the king on *.

Ever the said lord the king shall then re-
England, to hear the judgment aforesaid, that the court of the said lord the king now here is not yet advised thereof, &c.

W. B. B. B.

After the argument, the judgment of the court, either for affirmance or reversal, must be entered up upon the rolls, to follow the place in error is then placed. For terms close by the end of the next chapter, and the next.

This slender in error must be signed by an able policy stamp, signed by counsel, and delivered to the attorney for plaintiff in error, who is to be paid a fee of a crown on the delivery.

* The day assigned is the rule for judgment.

C H A P. XII.

The Consilium.

Counsel must then be employed to move
for a *consilium*.

Saturday next after eight days of St. Martin
in the 20th year of king George the third.

Hook } Thursday next after eight days of Rule for
Gregory. } St. Martin is appointed to bear *consilium*.
the counsel for both parties. Upon the
motion of Mr. Baldwin,

BY THE COURT.

SERVE a copy of this rule on the opposite
attorney. After which the whole pro-
ceedings, in both courts, are to be engrossed on
King's Bench rolls, from the beginning to the
end, which must be entered and docketed
with the clerk of the judgments, at the *King's
Bench Office*; and the rolls afterwards taken
to Mr. *Austen*, the clerk of the papers in
Symond's Inn, to be marked and entered for
the argument; and then to be left with Mr.
Way, at his office, or else in the *King's Bench
Treasury, Westminster-Hall*, ready to be pro-
duced in court.

On these *King's Bench* rolls the intire pro-
ceedings in both courts must be engrossed,
as we have mentioned before. Begin with
the writ of error first, engross the whole of

E 4.

that,

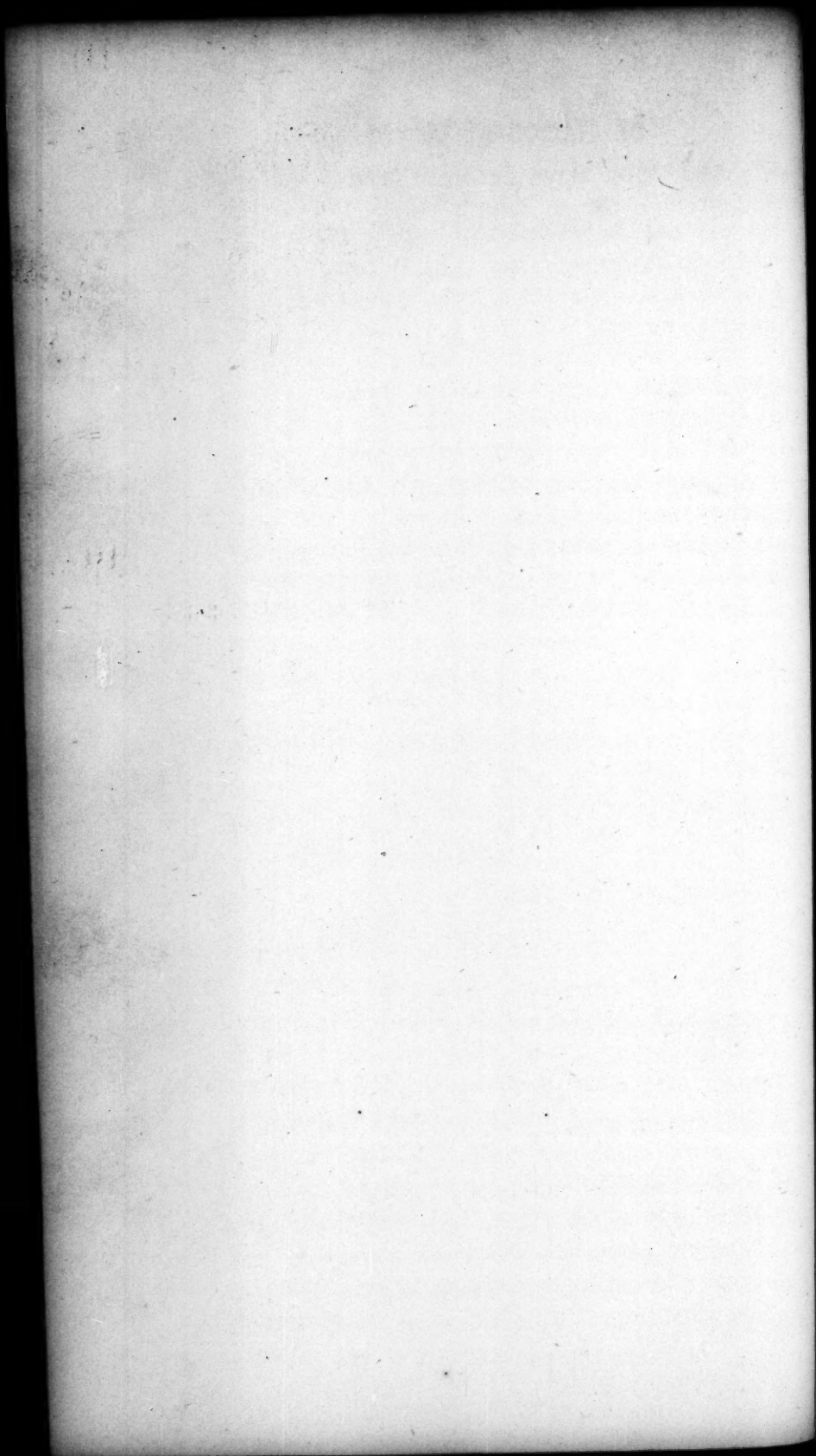
that, (*a copy whereof is delivered by Mr. Heberden with the copy of the transcript,**) then follows the declaration in the *Common Pleas*, down to the final judgment inclusive in that court, (*a copy of which is also delivered by Mr. Heberden.*) In fact the whole paper book, as delivered by him, is to be ingrossed on the rolls to the end: then immediately go on, in a new line, with the assignment of errors, (*thus, afterwards, that is to say, on Monday on the morrow of St. Martin, as in page 45 to the end*) and lastly the joinder in error in CHAP. XI.) follows the assignment of errors, on the rolls, in the same manner, to the end of it. This completes the entries on the rolls, for the argument. At the top of the first roll write, as usual, *As yet of Michaelmas term 1779. Witness William earl of Mansfield.* But the warrants of attorney in this case are superfluous, the warrants being filed before in the other court, and this being only a continuation of the same action. Not that they will do any hurt if added, supposing the addition should be preferred—but either way will serve.

For the argument, two paper books, each containing a copy of the whole proceedings as entered on the rolls, must be made by the attorney for the plaintiff, and two more by the attorney for the defendant.

Rule Easter.
2 Jac. II.

The paper books were formerly delivered to the judges two days, but now must be

* See page 35.



delivered four days before the day of argument.

The plaintiff delivers paper books to the Rule Michael-
chief justice, and first puisne judge, and the mas, 17 Car.
defendant delivers them to the other judges. II.

Then a paper book for the counsel on each side with a suitable fee.

When the *certiorari* is returned and filed, and issue joined in *nullo est erratum*, either party may move for *consilium*, and set down the errors for argument with the clerk of the papers.

If these rules are not complied with, the judges will not hear the argument: wherefore the party, who expects the decision in his favour, should take care to deliver paper books to all the judges, in case the attorney on the other side should neglect to do so.

For directions (if a *non pross* is obtained before affirmance) as to signing judgment, and suing out execution—See Chapter the last.

Affirmance to be entered on the roll after the argument.

At which Day before our lord the king at Westminster, come the parties aforesaid, by their attornies aforesaid: whereupon, as well the record and proceedings aforesaid, and the judgment given in form aforesaid, as the matters aforesaid, by the said John, above for error assigned, being seen and fully understood

Judgment
signed the
day of
1780.

Mercy.

stood, by the court of the said lord the king now here, and mature deliberation had thereupon: for that it appears to the court of our said lord the king now here, that there is no error, either in the record and proceedings aforesaid, or in giving the judgment aforesaid; **Therefore it is considered**, that the judgment aforesaid, given in form aforesaid, be in all things affirmed. **And it is farther considered**, that the said *Ann* do recover against the said *John*, as well her damages aforesaid, as also *fourteen pounds* adjudged to her by the court of our lord the king now here, according to the form of the statute in such case made and provided, for her damages, costs, and charges, which she has sustained, by occasion of the delay of execution of the judgment aforesaid, by means of the prosecution of the said writ of error; which said damages, costs, and charges, in the whole, amount unto forty two pounds, and ten shillings and that she have execution thereof, &c. and the said *John* in mercy, &c.

See *Index* for reversals, and executions.

C H A P. XIII.

*Assignment of errors that there is not
any warrant of attorney.*

A Pleas, to wit, on Monday on the
morning of St. Martin, in the same
year, before our lord the king at Westminster,
against the said John Gregory, by Richard Fox
his attorney, and says, against the record and
proceedings aforesaid, and also in giving the
judgment aforesaid, there is manifest error in
law, to wit, that the declaration aforesaid,
and the matters therein contained, are not
sufficient in law for the said John to have her
aforesaid action therein maintained against
him: there is also error in this, to wit, that
by the record aforesaid it appears, that the
judgment aforesaid, in form aforesaid given,
was given for the said John against the said
John, whereas by the law of the land, the said
judgment ought to have been given for the
said John against the said John: therefore
that there is manifest error. And the said John
further says that there is also error in this, to
wit, that there is no warrant of attorney filed of
record, nor remains of record, in the said court
of the said lord the king of the bench at
Westminster, between the parties aforesaid, in
the plea aforesaid, to warrant the said John Fox
to be attorney for the said John against the
said John Gregory, in the plea aforesaid: there-
in that there is manifest error. And the said
John

The Law and Justice

stood, by the court of the said lord the king
 now here, and mature deliberation had there
 upon; for that it appears to the court
 of our said lord the king now here, that the
 is so true, enter in the record and proceed-
 ings aforesaid, or in giving the judgment
 aforesaid, Therefore it is considered, and
 the judgment aforesaid, given in favor of the
 said, be in all things affirmed. And it is fur-
 ther considered, that the said *Ann* doth recover
 against the said *John*, as well her damages
 aforesaid, as also *fourteen pounds* damages
 to her by the court of our lord the king now
 here, according to the form of the statute in
 such case made and provided, for her da-
 mages, costs, and charges, which she has
 sustained, by occasion of the delay of execution
 of the judgment aforesaid, by means of the
 prosecution of the said writ of error, and the
 said damages, costs, and charges, in the whole,
 amount unto forty two pounds, and two shil-
 lings; and that she have execution thereof, &c.
 and the said *John* in mercy, &c.

Judgment
 given the
 day of
 17th.

May.

See *Index* for reversals, and executions.

C H A P. XIII.

Assignment of errors that there is not any warrant of attorney.

AFTERWARDS, to wit, on *Monday* on the morrow of *St. Martin*, in this same term, before our lord the king at *Westminster*, comes the said *John Gregory*, by *Richard Fen* his attorney, and says, that in the record and proceeding aforesaid, and also in giving the judgment aforesaid, there is manifest error in this, to wit, that the declaration aforesaid, and the matters therein contained, are not sufficient in law for the said *Ann* to have her aforesaid action thereof maintained against him: there is also error in this, to wit, that by the record aforesaid it appears, that the judgment aforesaid, in form aforesaid given, was given for the said *Ann* against the said *John*; whereas by the law of the land, the said judgment ought to have been given for the said *John* against the said *Ann*: therefore in that there is manifest error. And the said *John* further says that, there is also error in this, to wit, that there is no warrant of attorney filed of record, nor remains of record, in the said court of the said lord the king of the bench at *Westminster*, between the parties aforesaid, in the plea aforesaid, to warrant the said *John Den* to be attorney for the said *Ann*, against the said *John Gregory*, in the plea aforesaid: therein that there is manifest error. And the said

John

The Law and Practice

John prays a writ of the lord the king, to be directed to the chief justice of the said court of the bench, to certify to the said lord the king the truth of the same; and it is granted to him, &c. And the said *John* prays that the judgment aforesaid, for the errors aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and that he may be restored to all things which he hath lost by occasion of the said judgment, &c.

A. Chambre.

CHAP.

C H A P. XIV.

Circumstances to certify warrants of attorney.

The form :

ETIAM GE the third, by the grace of God,
King of Great Brittain, France, and Ireland,
Defender of the faith, &c. To our
right trusty and well-beloved Sir William de
Bourgh, knight, our chief justice of the bench,
greeting. We, being willing, for certain
reasons, to be certified, whether *Sanctus*
John de B., gentleman, her attorney
at law, against John Greaves, late of High-
gate, in the county of Middlesex, yeoman,
is the county of Middlesex, yeoman,
of respects on the case, before you
and your companions, our justices of the
said bench, do command you, that you
make the record, and other remembrance
of the warrants of attorney, for the county
of Middlesex, being in your custody, filed
in the said court, at Easter term, in the nineteenth
year of our reign : and what you shall find
concerning the said warrants of at-
torney, between the parties aforesaid, of the
said case, you certify to us without de-
lay, wherever we shall then be in England,
and the said line remains in your custody,
witness our hand at Westminster, the sixth day of
April, in the tenth year of our reign.

Witness and Wey.

The writt be returned, and filed in the
court at the other side, as in the
statute.

C H A P.

The Law and Practice

John prays a writ of the Lord the king, to be directed to the chief justice of the said court of the bench, or certify to the said lord the king the truth of the same, and it is granted to him, &c. And the said John prays that the judgment aforesaid for the errors aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and that he may be restored to all things which he hath lost by occasion of the said judgment, &c.

A. Chancery

CHANCERY

C H A P. XIV.

Certiorari to certify warrants of attorney.

The form :

GEORGE the third, by the grace of God, of Great Britain, France, and Ireland, king, defender of the faith, &c. To our right trusty and well-beloved Sir *William de Grey*, knight, our chief justice of the bench, greeting. We, being willing, for certain causes, to be certified, whether *Ann Hook* made *John Den*, gentleman, her attorney on record, against *John Gregory*, late of *Westminster*, in the county of *Middlesex*, yeoman, in a plea of trespass on the case, before you and your companions, our justices of the Bench aforesaid, do command you, that you search the records, and other remembrance rolls, of warrants of attorney, for the county of *Middlesex*, being in your custody, filed of record, of *Easter* term, in the nineteenth year of our reign: and what you shall find therein, concerning the said warrants of attorney, between the parties aforesaid, of the plea aforesaid, you certify to us without delay, wheresoever we shall then be in *England*, as fully as the same remains in your custody, together with this writ. Witness *William* earl of *Mansfield*, at *Westminster*, the 6th day of *November*, in the 20th year of our reign.

Stormont and Way.

This must be returned and filed in the same manner as the other *certiorari* in the ninth Chapter.

C H A P.

C H A P XV.

The joinder in error, that there is a warrant of attorney.

WHICH said writ of *certiorari*, so prayed and granted, follows in these words, to wit, *GEORGE* the third, by the grace of God, (*to the end of the writ of certiorari in the preceeding chapter, Stormont and Way*) which said chief justice of the bench aforesaid, returned and certified unto our said lord the king, that by virtue of the said writ of *certiorari*, he had searched the records, and other remembrance rolls, of the warrants of attorney, for the county of *Middlesex*, in his custody, filed of record, of *Easter* term, in the nineteenth year of the reign of our said lord the king, and that there was a warrant of attorney to warrant the said *John Den* to be attorney for the said *Ann*, against the said *John Gregory*, in the plea aforesaid, in his custody, filed of record, of the term aforesaid; the tenor of which said warrant of attorney, as fully as the same remained in his custody, filed of record, he the said chief justice thereby certified to the said lord the king, as appeared by the schedule thereunto annexed; as the said chief justice was in the said writ of *certiorari* commanded; which said schedule so annexed to the said writ of *certiorari* follows in these words, to wit, *The rolls of attornies received before Sir William*

of *Writs of Error*

63

John de Grey, knight, chief justice of our lord
the king, of the bench, and his companions,
in a writ term, in the nineteenth year of the
reign of our sovereign lord George the third,
by the grace of God, of Great Britain, France,
and Ireland, king, defender of the faith, &c.
doth direct to wit, *That* writ in re-
spect of *John Doe* her attorney, against *John*
Grey, late of *St. Michael's* in the said county
of *Middlesex*, yeoman, in a plea of trespass on
the case. Which said writ of *coramur*, to-
gether with the return thereof, among the
records without day, of *Easter term* afore-
said, is filed. And hereupon afterwards to-
wit, on *Saturday* next after eight days of *St.*
Michael's, in the twentieth year of the reign of
the said lord the king, the said *John Doe*, by
her attorney aforesaid, freely comes here into
court, and says, that there is no error either
in the record and proceedings aforesaid, or in
the judgment aforesaid, and she prays
that the court of the said lord the king now
being, may proceed to examine as a *bill of record*
the proceedings aforesaid, as the matters afore-
said for error assigned, and that the judgment
aforesaid, in form aforesaid given, may be in-
validated. But because the court of *Commons*,
the said lord the king now here, is not yet en-
abled to give judgment upon the
points, a day is given therefore to the par-
ties aforesaid, to come before the said lord the
king on *
And ever the said lord the king shall

that the day mentioned in the writ for the
purpose.

Then

CHAP. XV.

The finding in error, that there is a warrant of attorney.

WHICH said writ of certiorari, was, to wit, GEORGE the third, by the grace of God, (as the end of the writ of certiorari in the preceding chapter, Sheweth) which said chief justice of the bench, returned and certified unto our said lord the king, that by virtue of the said writ of certiorari, he had searched the records, and there remembrance falling of the warrants of attorney, for the county of Middlesex, he found, that of record, of the term of Michaelmas, last, of the reign of our said lord the king, and that there was a warrant of attorney to warrant the said John Doe to be attorney for the said John, against the said John Grogery, in the plea sheweth, in the said term of record, of the term of Michaelmas, last, of which said warrant of attorney, in full in the same remanded in the said book of records, by the said chief justice, thereby certified to our said lord the king, as appointed by the schedule therein annexed: as the said chief justice was in the said writ of certiorari commanded: which schedule is annexed to the said writ of certiorari follows in these words, to wit, Full of attorney received before

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liam de Grey, knight, chief justice of our lord the king, of the bench, and his companions, of *Easter* term, in the nineteenth year of the reign of our sovereign lord *George* the third, by the grace of God, of *Great Britain, France,* and *Ireland*, king, defender of the faith, &c. *Middlesex* to wit, *Ann Hook* puts in her place *John Den* her attorney, against *John Gregory*, late of *Westminster* in the said county of *Middlesex*, yeoman, in a plea of trespass on the case. Which said writ of *certiorari*, together with the return thereof, among the records without day, of *Easter* term aforesaid, is filed. And hereupon afterwards to wit, on *Saturday* next after eight days of *St. Martin*, in the twentieth year of the reign of the said lord the king, the said *Ann Hook*, by her attorney aforesaid, freely comes here into court, and says, that there is no error either in the record and proceedings aforesaid, or in giving the judgment aforesaid, and she prays that the court of the said lord the king now here, may proceed to examine as well the record and proceedings aforesaid, as the matters aforesaid for error assigned, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed. But because the court of Continuance, the said lord the king now here, is not yet advised what judgment to give of and upon the premisses, a day is given therefore to the parties aforesaid, to come before the said lord the king on *
wheresoever the said lord the king shall

* Insert the day mentioned in the rule for the consilium.

The Law and Practice

then be in *England*, to hear the judgment
aforesaid, for that the court of the said lord
the king now here, is not yet advised thereof,
&c.

J. Morgan.

The directions given in the twelfth chapter
are fully applicable to be followed in the
present process in all respects.

CHAP.

Chapter LXXVII

then be in England, to hear the judgment
stand, for that the court of the said
the King now here, is not yet advised thereof.

W. M.

The directions given in the twelfth chapter
are fully applicable to be followed in the
present process in all respects.

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C H A P. XVI.

Containing the assignment of the general errors.

Afterwards, to wit, on *Wednesday* in three weeks of the *Holy Trinity*, in this same term, comes the said *John Gregory*, by *Richard Fen* his attorney, and says that in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error in this, to wit, that the declaration aforesaid, and the matters therein contained, are not sufficient in law for the said *Ann* to have and maintain her aforesaid action thereof against the said *John*. There is also error in this, to wit, that by the record aforesaid, it appears, that the judgment aforesaid, in form aforesaid given, was given for the said *Ann* against the said *John*. Whereas by the law of the land the said judgment ought to have been given for the said *John* against the said *Ann* *. And the said *John* prays that the judgment aforesaid, for

* If the writ of error is sued out for delay only, and that there is no probability of reversing the judgment, the plaintiff in error will not be in any hurry for the defendant to join in *nullo est erratum*: therefore he need not pray a *certiorari* for the defendant to hear errors, as is done in page 72. for he will take care to lose no time in doing it, without being forced thereto by a *certiorari*: which is in this place made use of, when the plaintiff in error thinks he can reverse the judgment, in order to compel the opposite party to appear to hear errors.

F

the

The Law and Practice

the errors aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and that he may be restored to all things which he hath lost by occasion of the said judgment, &c.

A. Chambre.

The general joinder in nullo est erratum.

AND hereupon afterwards to wit, on *Saturday* next after the morrow of *All-Souls*, in *Michaelmas* term, in the 20th year of the reign of the said lord the king, the said *Ann Hook*, by *John Den* her attorney, freely comes here into court, and says, that there is no error either in the record and proceedings aforesaid, or in giving the judgment aforesaid; and she prays that the court of the said lord the king now here, may proceed to examine, as well the record and proceedings aforesaid, as the matters aforesaid above for error assigned, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed. But because the court of the said lord the king now here, is not yet advised what judgment to give of and concerning the premisses; a day is therefore given to the parties aforesaid to come before the said lord the king on _____ wheresoever the said king shall then be in *England*, to hear judgment aforesaid, for that the court of the said lord the king now here, is not advised thereof &c.

J. Morgan.

CHAP.

C H A P. XVII.

The form of the entries to be made in the rolls.

§ 170 How the law and practice of writs of error in a high criminal degree, the following proceedings vary in every part from the foregoing, and are complete in themselves from the beginning to the end, both in the course at law, and on the writ of error.

§ 171 As per *exchequer term*, 1720.

"Wm. de Villiers, earl of Macclesfield."

Edward the 1st 1720 the king hath sent writs under the great seal of Great Britain, bearing this tenor.

To his trusty and well-beloved

John de Villiers, knight, his man chosen

in these words: GEORGE the third, by the

grace of God, of Great Britain, France, and

Ireland, king, defender of the faith, and

in form, To our trusty and well-beloved

John de Villiers, knight, chief justice of the

bench, greeting. Because in the record, and

process, and also in the giving of judg-

ment, in the plain which was in our court

before you, and your associates, our

judges of the bench, by our writ, between

John de Villiers, knight, and John de Villiers, knight, late of the

Writs of attorney may be granted.

F 2

min.

C H A P. XVII.

The form of the entries to be made on the rolls.

TO shew the law and practice of writs of error in a still greater degree, the following proceedings vary in every part from the foregoing, and are complete in themselves from the beginning to the end, both in the cause at law, and on the writ of error.

“As pet of Michaelmas term, 1780.

“Witness William earl of Mansfield.” *

England ‘ **O**UR lord the king hath sent Writ of error.
to wit. ‘ to his trusty and well-beloved
“Sir William de Grey, knight, his writ closed
“in these words: GEORGE the third, by the
“grace of God, of Great Britain, France, and
“Ireland, king, defender of the faith, and
“so forth. To our trust and well beloved Sir
“William de Grey, knight, chief justice of the
“bench, greeting. *Because* in the record, and
“process, and also in the giving of judg-
“ment, of the plaint which was in our court
“before you, and your companions, our
“justices of the bench, by our writ, between
“John Foster, and Benjamin Dun, late of West-

* Warrants of attorney may be omitted.

The Law and Practice

“ *minster*, in the county of *Middlesex*, gentle-
 “ man, of a certain debt of 100*l.* which the
 “ said *John* demands of the said *Benjamin*,
 “ manifest error hath intervened, to the great
 “ damage of him the said *Benjamin*; as we
 “ from his complaint are informed: *We* being
 “ willing that the error, if any there be,
 “ should be corrected in due manner, and
 “ that full and speedy justice should be done
 “ to the parties aforesaid, in this behalf, do
 “ command you, that if judgment thereof
 “ be given, then, under your seal, you do
 “ distinctly and openly send the record and
 “ process of the plaint aforesaid, with all
 “ things concerning them, and this writ, so
 “ that we may have them on the morrow of
 “ the *Holy Trinity*, wheresoever we shall then
 “ be in *England*: that, the record and process
 “ aforesaid being inspected, we may cause to
 “ be done thereupon, for correcting that er-
 “ ror, what of right, and according to the
 “ law and custom of our realm of *England*,
 “ ought to be done. Witness ourself at
 “ *Westminster*, the 8th day of *May*, in the
 “ twentieth year of our reign.

Chief justice's
return.

“ *The answer of Sir William de Grey the*
 “ *chief justice within named.*

“ *The record* and process, whereof mention
 “ is within made, follow in these words, to
 “ wit:

The record.

“ P L E A S at *Westminster*, before Sir
 “ *William de Grey*, knight, and his brethren
 “ justices of the bench of the lord the king
 “ at *Westminster*, of the term of *Easter*, in the
 20th

THE LAST AND FIFTH

"wherein, in the country of *Wiltshire*, a
 "man of a certain estate of good worth, who
 "and his wife, of the said *Wiltshire*,
 "married with every one, in the last
 "damage to him the said *Wiltshire*,
 "from his complaint is informed: He being
 "willing that the error, if any there be,
 "should be corrected in due manner; and
 "that full and perfect justice should be done
 "to the parties concerned, in this behalf, he
 "commanded you, that if judgment there
 "be given, then, under your seal, you
 "should fully and openly send the record and
 "process of the pleas aforesaid, with
 "things concerning them, and this writ, to
 "that we may have them on the Morrow
 "of the *Feast of Trinity*, wherefore we shall then
 "be in England: that, the record and process
 "aforesaid being inspected, we may cause to
 "be done thereupon, for correcting that in
 "them, what of right, and according to the
 "law and custom of our realm of *England*,
 "shall to be done. Which writ he
 "gave, the 5th day of May, in the
 "fourteenth year of our reign.

"The names of Sir William de Grey the
 "chief justice of the bench.

"The record and process, wherof mention
 "is made herein, follow in these words, in
 "this manner.

"PLEASE at Westminster, before Sir
 "William de Grey, knight, and his brethren
 "of the bench of the lord the king
 "at Westminster, of the term of *Easter*, in the
 "fourteenth year of our reign.

" 20th year of the reign of our sovereign lord,
 " George the third, by the grace of God, of
 " Great Britain, France, and Ireland, king,
 " defender of the faith, &c. And in the year The declara-
 " of our Lord 1780. Roll 1000. *Middlesex* tion (by the
 " to wit, *Benjamin Dun*, late of *Westminster*, in author.)
 " the said county of *Middlesex*, gentleman, was
 " summoned to answer *John Foster*, of a plea
 " that he render to him 100*l.* of lawful money
 " of Great Britain, which he owes to, and
 " unjustly detains from him. And thereupon
 " the said *John*, by *Richard Fen*, his attorney,
 " saith, That whereas the said *Benjamin*, on the
 " first day of *January*, in the year of our Lord
 " 1780, at *Westminster*, in the county of
 " *Middlesex* afore said, by his certain writing
 " obligatory, called a bond, sealed with his
 " seal, and now shewn to the court here,
 " the due whereof is the same day and year
 " afore said, became held and firmly bound
 " to the said *John*, by the name of *John*
 " *Foster*, of *Lambeth*, in the county of *Surry*,
 " timber-merchant, in the said sum of 100*l.*
 " to be paid to the said *John*, whenever
 " afterwards he the said *Benjamin* should be
 " thereto requested. Yet the said *Benjamin*
 " (although often thereto requested, &c.)
 " hath not rendered to the said *John*, the
 " said sum of 100*l.* above demanded, or any
 " part thereof: but so to do the said *Benja-*
 " *min* hath hitherto altogether refused, and
 " still doth refuse, and the same is still un-
 " paid; wherefore the said *John* saith, that he
 " is injured, and hath sustained damage to the
 " value of ten pounds, and therefore he
 " brings his suit, and so forth. And the Presert in
 " said curia,

Demurrer.

Joinder in
demurrer.

“ said *John* brings here into court the said
 “ writing obligatory, which testifies the debt
 “ aforesaid, the date whereof is the same day
 “ and year in that behalf above mentioned.
 “ AND the said *Benjamin*, by *John Den* his
 “ attorney, comes and defends the force and
 “ injury when, &c. and saith that the de-
 “ claration aforesaid, and the matters therein
 “ contained, are not sufficient in law for the
 “ said *John* to have his aforesaid action there-
 “ of maintained against the said *Benjamin*;
 “ to which said declaration, in manner and
 “ form as the same is above set forth, the
 “ said *Benjamin* is not under any necessity,
 “ neither is he bound by the law of the land
 “ in any manner to answer. And this he
 “ is ready to verify. Wherefore for want
 “ of a sufficient declaration in this be-
 “ half, the said *Benjamin* prays judgment,
 “ and that the said *John* may be barred
 “ from having his said action thereof main-
 “ tained against him, &c.—*Nash Grose*.—
 “ AND the said *John* saith that the decla-
 “ ration aforesaid, in manner and form as
 “ the same is above set forth, and the mat-
 “ ters therein contained, are sufficient in law
 “ for the said *John* to have his aforesaid ac-
 “ tion thereof maintained against the said *Ben-*
 “ *jamin*; which said declaration, and the mat-
 “ ters therein contained, the said *John* is
 “ ready to verify and prove as the court shall
 “ award. And because the said *Benjamin* hath
 “ not answered to the said declaration, nor
 “ hitherto in any manner denied the same, the
 “ said *John* prays judgment, and his debt
 “ aforesaid.

"stated, together with his damages recou-
 "pensed by obtaining the said debt, to be
 "adjudged to him. *Et* *Thomas Walker*.
 "AND BECAUSE the judges here in Court, Chancery,
 "will advise themselves of and upon the pre-
 "sent before they give judgment upon the
 "same, a day is therefore given to the parties
 "aforesaid here, until three days from the
 "day of *Extr*, to hear their judgment there-
 "upon, for that the said judges here, are not
 "yet advised thereof. At which day came
 "as well the said *Yates*, as the said *Burgess*,
 "by their attorneys aforesaid. *It* *interrupts* the Opinion of
 "certain aforesaid having been seen, and by the Court.
 "the judges here fully understood; and all
 "the Judges the premises being exami-
 "ned, and mature deliberation had there-
 "upon; for that it seems to the said judges
 "here, that the declaration aforesaid,
 "and the matters therein contained, are not
 "sufficient in law for the said *Yates* to have
 "his aforesaid action thereon maintained
 "against the said *Burgess*. Therefore it is
 "considered, that the said *Yates* take nothing
 "by his writ aforesaid, but that he and his
 "pleaves of procuring, the said *John Doe*,
 "and *Richard Roe*, bear twenty per cent.
 "complaint, and that the said *Burgess* go
 "thereof without day, &c. And it is fur-
 "ther considered, that the said *Burgess* do re-
 "cover against the said *Yates*, ten pounds and costs.
 "The billings, for his said costs, and charges,
 "by him about his defence, is thus behav-
 "oured, adjudged by the Court here to the
 "said *Burgess*, with the assent, according to
 "the

THE LAW AND EQUITY

Dissent.

John's
remarks.

"The said John brings here into court the said
 "writing obligatory, which setteth the day
 "aforesaid, the date whereof is the same day
 "and year as last before above mentioned.
 "AND the said Benjamin, by John Doe his
 "attorney, comes and defends the force and
 "injury whereunto, and saith that the de-
 "claration aforesaid, and the matters therein
 "contained are not sufficient in law for the
 "said John to have his aforesaid action there-
 "of maintained against the said Benjamin,
 "in which said declaration, in manner and
 "form as the same is above set forth, the
 "said Benjamin is not under any necessity
 "neither is he bound by the law or the equity
 "in any manner to answer. And this he
 "is ready to verify. Wherefore he prayeth
 "that a sufficient declaration in this be-
 "half the said Benjamin pray judgment,
 "that the said John may be barred
 "from having his said action thereof main-
 "tained against him. *Et* --- *Non* *Cur* ---
 "AND the said John saith that the de-
 "claration aforesaid, in manner and form as
 "the same is above set forth, and the mat-
 "ters therein contained, are sufficient in law
 "for the said John to have his aforesaid ac-
 "tion thereof maintained against the said Ben-
 "jamin; which said declaration, and the mat-
 "ters therein contained, the said John is
 "ready to verify and prove as the court shall
 "award. And because the said Benjamin hath
 "not answered to the said declaration, nor
 "subscribed in any manner denied the same, the
 "said John prays judgment, and his

"aforesaid, together with his damages occa-
 "sioned by detaining the said debt, to be
 "adjudged to him, &c. *Thomas Walker.*
 "AND BECAUSE the justices here in court, Continuance.
 "will advise themselves of and upon the pre-
 "misses before they give judgment upon the
 "same; a day is therefore given to the parties
 "aforesaid here, until fifteen days from the
 "day of *Easter*, to hear their judgment there-
 "upon, for that the said justices here, are not
 "yet advised thereof. At which day came
 "as well the said *John*, as the said *Benjamin*,
 "by their attornies aforesaid. Whereupon the Opinion of
 "matters aforesaid having been seen, and by the court.
 "the justices here fully understood; and all
 "and singular the premises being examin-
 "ed, and mature deliberation had there-
 "upon; for that it seems to the said jus-
 "tices here, that the declaration aforesaid,
 "and the matters therein contained, are not
 "sufficient in law for the said *John* to have
 "his aforesaid action thereof maintained
 "against the said *Benjamin*. Therefore it is
 "considered, that the said *John* take nothing
 "by his writ aforesaid, but that he and his
 "pledges of prosecuting, (to wit) *John Doe*,
 "and *Richard Roe*, be in mercy for his false
 "complaint, and that the said *Benjamin* go
 "thereof without day, &c. And it is fur- Amercement,
 "ther considered, that the said *Benjamin* do re- Costs.
 "cover against the said *John*, ten pounds and
 "ten shillings, for his said costs, and charges,
 "by him about his defence, in this behalf sus-
 "tained, adjudged by the court here to the
 "said *Benjamin*, with his assent, according to
 "the

Execution
awarded.

General error
assigned.

Scire facias to
hear errors.

“ the form of the statute in such case made
“ and provided; and that the said *Benjamin*
“ may have execution thereof, &c.

AFTERWARDS, that is to say, on
“ *Monday* next after the morrow of *All Souls*,
“ in this same term, before our sovereign lord
“ the king at *Westminster*, comes the said *John*
“ *Foster*, by *Richard Fen* his attorney, and
“ saith that in the record and process afore-
“ said, and also in giving the judgment afore-
“ said, there is manifest error, in this, (to wit)
“ that the judgment aforesaid, in form afore-
“ said given, was given for the said *Benja-*
“ *min* against the said *John*: whereas by the
“ law of the land the said judgment ought
“ to have been given for the said *John*
“ against the said *Benjamin*. And this he the
“ said *John* is ready to verify. And the said
“ *John* prays a writ of the said lord the king
“ to warn the said *Benjamin* to be before
“ the said lord the king to hear the record
“ and process aforesaid, and the matter afore-
“ said for error assigned, and it is granted to
“ him, &c. by which it is commanded to
“ the sheriff of the county aforesaid, that by
“ good and lawful men of his bailiwick, he
“ make it known to the said *Benjamin* that
“ he be before the lord the king in fifteen
“ days of *Saint Martin*, wheresoever he shall
“ then be in *England*, to hear the record and
“ process aforesaid, and the matter aforesaid
“ for error assigned; and further to do and
“ receive what the said court of the said lord
“ the king shall consider of him in this be-
“ half. The same day is given to the said
John,

At which day, before our said
 the King, came the said John, by his
 attorney, sheriff, and others, himself absent
 the said Benjamin, and the Sheriff (to wit)
 Sheriff of the said County
 returned, that by virtue of the said writ he
 had caused it to be made
 known to the said Benjamin, that he be
 before the said the King at the time in the
 said writ mentioned, by James Lawrence,
 the Sheriff of the said County, &c. as by the
 said writ was commanded. And
 the said Benjamin, being so called,
 did not appear. Where-
 upon the said the King, said, that
 the said record and return afore-
 said, being the judgment afore-
 said, shall stand in law, (to wit) that the
 judgment, returned, is in law given,
 and given for the said Benjamin, against the
 said John, and that the law of the land,
 and that judgment, might not have been
 given for the said John against the said Ben-
 jamin. And does he is ready to reply. And
 the said John prays that the judgment
 be reversed, for the error afore-
 said, and other errors in the record and proceedings afore-
 said, may be perceived, amended, and al-
 tered, and that he may
 be restored to all things which he hath lost
 by reason of the said judgment.

Should be
 into the first

Attorney of
 the said

of Chancery

If the defendant in error does not appear on the
 day to hear errors, let down the cause for a quare,
 and the plaintiff shall be held for party.

AND

The Law and Justice

the form of the Statute in such case made
and provided, and that the said Henry
may have execution thereof, &c.

General error assigned.
AFTERWARDS, that is to say, after
the death of the said Henry, the mother of the said
king, in the month of November, came the said John
Folger, by Richard Fox his attorney, and
saith that in the return and process above
said, and also in giving the judgment above
said, there is manifest error in this, to wit,
that the judgment aforesaid, in favor of the
said John, was given for the said Henry
and against the said John whereas by the
law of the land the said judgment ought
to have been given for the said John
against the said Henry. And this he saith
and John is ready to verify. And the said
John prays a writ of the said John the king
to warrant the said Sergeant to be before
the said lord the king to hear the return
and process aforesaid, and the matter above
said the error assigned, and it is granted
him, &c. by which it is commanded
the sheriff of the county aforesaid, that he
good and lawful men of his bailiwick, he
make it known to the said Henry that he
be before the said lord the king in the
city of Saint Martin, on the first day of
March next to come, to hear the return
and process aforesaid, and the matter above
said the error assigned, and further to do
and receive what the law upon of the said law
the king shall command of him in this behalf.
The same day is given to the said John.

" *John*, &c. At which day, before our said Sheriffs re-
 " lord the king, comes the said *John*, by his turn *scire fac.*
 " attorney aforesaid, and offers himself against
 " the said *Benjamin*; and the Sheriff (to wit)
 " Sheriff of the said county
 " returns, that by virtue of the said writ to
 " him directed, he had caused it to be made
 " known to the said *Benjamin*, that he be be-
 " fore the lord the king at the time in the
 " said writ mentioned, by *James Strongarm*,
 " and *William Chariot*, good, &c. as by the
 " said writ he was commanded, &c. And
 " the said *Benjamin*, being solemnly called, *
 " by *John Den* his attorney, comes. Where- Assignment of
 " upon the said *John* as before, saith, that error afresh.
 " in the record and process aforesaid, and also
 " in giving the judgment aforesaid, there is
 " manifest error in this, (to wit) that the
 " judgment aforesaid, in form aforesaid given,
 " was given for the said *Benjamin*, against the
 " said *John*: whereas, by the law of the land,
 " the said judgment ought to have been
 " given for the said *John* against the said *Ben-*
 " *jamin*. And this he is ready to verify. And
 " the said *John* prays that the judgment
 " aforesaid, for the error aforesaid, and other
 " errors in the record and proceedings afore-
 " said, may be reversed, annulled, and alto-
 " gether held for nothing, and that he may
 " be restored to all things which he hath lost
 " by occasion of the said judgment, &c.

A. Chambre.

* If the defendant in error does not appear on the
sci. fa. to hear errors, set down the cause for argument,
 and the plaintiff shall be heard *ex parte*.

Joinder in error.

Continuance.

Opinion of the court.

“ AND the said *Benjamin*, by his attorney
 “ aforesaid, comes and saith, that there is no er-
 “ ror either in the record and proceedings afore-
 “ said, or in giving the judgment aforesaid.
 “ And he prays that the court of the said lord
 “ the king now here, may proceed to examine,
 “ as well the record and proceedings aforesaid,
 “ as the matter aforesaid for error assign-
 “ ed, and that the judgment aforesaid in
 “ form aforesaid given, may be in all things
 “ affirmed. *But because* the court of the said
 “ lord the king now here, is not yet advised
 “ what judgment to give of and upon the
 “ premisses, a day is therefore given to the
 “ parties aforesaid, to come before the said
 “ lord the king on * where-
 “ soever he shall then be in *England*, to hear
 “ the judgment aforesaid, for that the court of
 “ the said lord the king now here is not yet
 “ advised thereof, &c.

J. Lane.

“ At which day before our lord the king
 “ at *Westminster*, come the parties aforesaid,
 “ by their attornies aforesaid, whereupon as
 “ well the record and proceedings aforesaid,
 “ and the judgment aforesaid, in form afore-
 “ said given, as the matter aforesaid, by the
 “ said *John* above for error assigned, being
 “ seen and fully understood by the court of
 “ the said lord the king now here, and ma-
 “ ture deliberation had thereupon: for that
 “ it appears to the court of our lord the king

* The day mentioned in the rule for *confilium*.

Now here, that in the record and proceedings
aforesaid, and also in giving the judg-
ment aforesaid, there is manifest error. There-
fore it is considered, that the judgment aforesaid,
for the error aforesaid, and other er-
rors in the record and proceedings aforesaid,
be reversed, annulled, and altogether
set aside for nothing, and that the said John
do recover against the said Benjamin his judgment for
the plaintiff, 400 l. for his damages
which he hath sustained, as well by means
of detaining the said debt, as for his costs
and charges by him expended about his suit
in this behalf, by the court of our said lord
king now here adjudged to the said
John, with his costs, and that he have ex-
ecution thereof, &c. And the said Benja-
min in mercy, &c."

Witness the

THE LAW AND EQUITY

John is co-
...

AND the said Regent, by his attorney
aforesaid, comes and shews, that there is no
for either in the record and proceedings aforesaid,
said, or in giving the judgment aforesaid,
said he prays that the court of the said
the king now here, may proceed to examine,
as well the record and proceedings aforesaid,
as the manner aforesaid for error assigned,
and that the judgment aforesaid is
some aforesaid given, may be in all things
affirmed. But because the court of the said
lord the king now here, is not yet advised
what judgment to give in and upon the
premises, a day is therefore given to the
parties aforesaid, to come before the
lord the king on the day when
forever he shall come be in England, to hear
the judgment aforesaid, for that the court of
the said lord the king now here is not yet
advised thereof, &c.

Consideration

...

7. Law

Opinion of
the court

It which day before our lord the king
at Westminster, came the parties aforesaid,
by their attorneys aforesaid, whereupon
all the record and proceedings aforesaid,
and the judgment aforesaid, to form aforesaid
said given, as the manner aforesaid, by the
said John above for error assigned, were
seen and fully considered by the court of
the said lord the king now here, and the
court aforesaid had thereupon for the
it appears to the court of our lord the king

* The day mentioned in the rule by capitulo

“ now here, that in the record and proceed-
 “ ings aforeſaid, and alſo in giving the judg-
 “ ment aforeſaid, *there is manifeſt error. There- Reverſal.*
 “ fore it is conſidered, that the judgment afore-
 “ ſaid, for the error aforeſaid, and other er-
 “ rors in the record and proceedings afore-
 “ ſaid, be reverſed, annulled, and altogether
 “ held for nothing; and that the ſaid *John* Judgment for
 “ do recover againſt the ſaid *Benjamin* his the plaintiff.
 “ debt aforeſaid, and alſo 40*l.* for his damages
 “ which he hath ſuſtained, as well by means
 “ of detaining the ſaid debt, as for his coſts Judgment
 “ and charges by him expended about his ſuit ſigned the
 “ in this behalf, by the court of our ſaid lord day of
 “ the king now here adjudged to the ſaid 1781.
 “ *John*, with his aſſent, and that he have exe-
 “ cution thereof, &c. And the ſaid *Benja-*
 “ *min* in mercy, &c.”

Mercy, &c.

CHAP. XVIII.

The diversity of errors.

Error { *in fact.*
 in law.

Cro. Jac.
580. 581.

IF matters of fact are alleged in error, as non-age, death, &c. &c. a proper plea must be made thereto, and issue taken thereon, and tried, as in any other issue.

Cro. Eliz.
158.
Lord Staf-
ford's case.

Error upon a judgment in assize, and the plaintiff assigns one error in fact (to wit) that the land lay in *D.* in the county of *Monmouth*, and not in *Salop*, where the assize was held.

Yelv. 58.

King v. Gos-
pore.
2 Saund.
212. 213.

The defendant in replevin, against whom judgment was given, assigns for error there were two avowants, one of whom being within age, appeared by attorney; whereas he ought to have appeared by *guardian*. This therefore is an error not triable by the court, but in it's proper nature by the country.

22 Edw. IV.
46.

In avoidance of an outlawry, defendant assigns for error he was in *France* under a captain in war; this is matter of fact, and shall be tried by the captain's certificate.

22 Edw. IV.
46.

But contrarywise to say, there is not any original, &c. or in avoidance of an outlaw-

OF WRITS OF ERROR.

It is to be observed, that the writ of error is not a writ of course, but is only granted by the record of the original writ, and is returned and certified.

This process is called

WRIT OF ERROR, which may be granted

It may not in the *Exchequer chamber*, but in the *Common Pleas*, *King's Bench*, and in the *Queen's Bench*, and in the *House of Commons*, it then lies in the *House of Lords*, when the writ is made out in court, and it is no longer a writ, but is a *judgment* of the court, which is a *final judgment*, and is not subject to any further review, except in the *House of Lords*.

To remedy the defects in the writ, it is necessary to have a writ of error, which is a writ of course, and is granted by the court, and is not subject to any further review, except in the *House of Lords*.

The writs are to be assigned and entered in the *record of the judgment*, and are to be assigned and entered in the *record of the judgment*.

The writs to be assigned must be assigned in the *record of the judgment*, and are to be assigned and entered in the *record of the judgment*, and are to be assigned and entered in the *record of the judgment*, and are to be assigned and entered in the *record of the judgment*.

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The Law and Practice

CHAP. XXVII.

The Clergy of the Court.

Error in fact
Error in law

Ch. 10.
Sec. 10.

If parties offer and allege in error, a writ
of error, shall be taken, and proper writ
made thereon, and the taken thereon
shall, as in and after that.

Ch. 10.
Sec. 10.

Error upon a judgment in error, and
plaintiff alleges the error to be, that
the law of D. is the county, and not in error, where the error is
held.

Ch. 10.
Sec. 10.

The defendant in reply, against the
plaintiff was given, and the error
was two witnesses one of whom being
in error, appeared by mistake, who
ought to have appeared by mistake
therefore is an error not that by the court
but is it's proper nature to the court.

Ch. 10.
Sec. 10.

In avoidance of an oath, the defendant
signs for him to be sworn to France under an
oath, that is matter of fact, and shall be
by the captain's certificate.

Ch. 10.
Sec. 10.

But contrary to say, there is not an
original, or in avoidance of an oath.

of Writs of Error.

77

ry, that he was but *quarto exactus*; for these are manifested by the record of the *exigent*, and *certiorari*, when returned and certified.

This process is called

Writ of Error, coram vobis residet.

It lies not in the *Exchequer chamber*; but ^{2 Mod. 194.} on judgments given in the *Common Pleas*, it lies in the *King's Bench*; and on the judgments of the latter, it then lies in the same court: when sued out it must be allowed in court, and it is no superseas (as it is said) but by leave of the court; in regard none of the statutes, which oblige the plaintiff in error to put in bail, extend to it. ^{2. if it may not be allowed in vacation.}

To compel the plaintiff to assign errors, the court must be moved, and he must assign errors immediately upon service of the rule.

The errors are to be assigned and entered upon the record of the judgment.

The errors to be assigned must be facts only, as before mentioned: error in fact, is not the error of the judges, and the reversing a judgment given by them, which is erroneous in matter of fact only, is not reversing their judgment; but otherwise if the judgment be erroneous in matter of law, for they cannot be said to reverse their own judgments.

Upon

Defendant on error in fact assigned, may carry the cause to trial the first assigns without proviso.

Upon issue taken of error in fact, you may proceed to trial as in other common cases, and if found for the plaintiff on trial, he must move to put the cause in the paper for argument, and then, producing the *poslea*, the court will give judgment of reversal.

E. 13 Geo. 1.
King v. Jones.
M. S. Rep.

In error *cor. vob.* there is no *scire facias* to assign error, but the defendant in error must move the court for a rule against the plaintiff in error to assign his errors.

A record of *Nisi prius*, on issue joined in error in fact.

Pleas before our lord the king at Westminster, of the term of the Holy Trinity, in the 20th year of the reign of our sovereign lord George the third, by the grace of God, of Great Britain, France, and Ireland, king, defender of the faith, &c.

Roll 1000.

Stormont and Way.

The writ of error coram vobis residet.

England, **O**UR lord the king hath sent to (to wit.) his trusty and well beloved Sir William de Grey, Knight, his chief justice of the Bench, his writ closed in these words. George the third, by the grace of God, of Great Britain, France, and Ireland, king, defender of the faith, &c. To our trusty and well beloved Sir William de Grey, knight, our chief justice of the Bench, greeting. Because in the record and process, as also in the giving

OF SERIES OF CASES

of judgment, in a plaint, which was in our
court some years, and your companions our fel-
lowes of the Bench, by our writ, between Thomas
Jesse, and John Fir, late of Westminster, in
the County of Middlesex, gentleman, and Solo-
mon Hill, late of the same place, gentleman,
of a plea of trespass on the case, wherein
error hath intervened, to the great damage of
the said John and Solomon, as we from the cer-
tificates of the said John and Solomon are informed.
We being willing that the error, if any there
be, should be corrected in due manner, and
that full and speedy justice should be done to
the parties aforesaid, in this behalf, do com-
mand you, that if judgment thereof be given,
then, under your seal, you do distinctly, and
openly, send the record and process of the
plaint aforesaid, with all things concerning
them, and this writ, so that we may have
them on the octave of Saint Hilary, when so-
ever we shall then be in England, that the
record and process aforesaid being inspected,
we may cause to be done thereupon for cor-
recting that error, what of right, and accord-
ing to the law and custom of our realm of
England, ought to be done. Witness ourself
at Westminster, the 29th day of December, in
the seventh year of our reign. The answer Chief Justice's
of Sir William de Grey knight, the Chief Jus-
tice within named. *The Record and Process*,
whereof mention is within made, follow in
these words. *Witness at Westminster, before Sir*
William de Grey, knight, and his brethren, Jus-
tices of our lord the king of the Bench at
Westminster, of the term of Saint Michael, in
the sixth year of the reign our sovereign lord
George

The Law and Practice

Defendant's error in fact, proceed to that as in other cases, and if found for the plaintiff, or if not, move to put the same to the jury for argument, and then, producing the writ, the court will give judgment of reversal.

In error *in law*, there is no *juris factum* error, but the defendant in error may move the court for a rule against the plaintiff in error to allege his error.

A record of 184 pages, on blue paper, is now in full.

Given before me and the King of Great Britain, in the 25th year of the reign of our Sovereign Lord George the Third, by the grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, &c.

Roll 1800.

Barnard and W. G.

The King of England, Ourselves the King, have given to wit, William de Grey, Knight, his chief justice of the Bench, his wife elected in the reign of George the third, by the grace of God, Great Britain, France, and Ireland, Defender of the Faith, &c. To our well beloved Sir William de Grey, Knight, chief justice of the Bench, greeting. In the second and seventh, or also in the

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of judgment, in a plaint, which was in our court before you, and your companions, our justices of the *Bench*, by our writ, between *Thomas Sable*, and *John Vie*, late of *Westminster*, in the county of *Middlesex*, gentleman, and *Solomon Mort*, late of the same place, gentleman, of a plea of trespass on the case, manifest error hath intervened, to the great damage of the said *John* and *Solomon*, as we from the complaint of the said *John* and *Solomon* are informed. We being willing that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid, in this behalf; do command you, that if judgment thereof be given, then, under your seal, you do distinctly, and openly, send the record and process of the plaint aforesaid, with all things concerning them, and this writ, so that we may have them on the octave of Saint *Hilary*, wheresoever we shall then be in *England*, that, the record and process aforesaid being inspected, we may cause to be done thereupon for correcting that error, what of right, and according to the law and custom of our realm of *England*, ought to be done. Witness ourself at *Westminster*, the 29th day of *November*, in the twentieth year of our reign. The answer Chief justice's of Sir *William de Grey* knight, the chief justice within named. *The Record and Process*, whereof mention is within made, follow in these words, *Pleas* at *Westminster*, before Sir *William de Grey*, knight, and his brethren, justices of our lord the king of the *Bench* at *Westminster*, of the term of Saint *Michael*, in the 20th year of the reign our sovereign lord
George

The writ.

Declaration
for an under-
taker's bill.
By J. Lane
Esq;

*George the third, by the grace of God, of Great Britain, France, and Ireland, king, defender of the faith, &c. Roll 851. Middlesex, to wit, John Vie, late of Westminster, in the county of Middlesex, gentleman, and Solomon Mort, late of the same place, gentleman, were attached to answer Thomas Sable, of a plea of trespass on the case, &c. and thereupon the said Thomas, by John Den his attorney, complains, that whereas the said John and Solomon, on the first day of January in the year of our Lord 1780, at Westminster aforesaid, were indebted to the said Thomas in 30*l* of lawful money of Great Britain, as well for work and labour before that time done and performed by the said Thomas, for the said John and Solomon, in and about the funeral of one William Mort deceased, at the special instance and request of the said John and Solomon, as also for diverse materials, and necessary things, used and employed in and about the doing and performing the said work and labour, and in and about the said funeral, by the said Thomas, at the like special instance and request of the said John and Solomon, before that time found and provided. And being so indebted, the said John and Solomon, in consideration thereof, afterwards, (to wit) on the same day and year aforesaid, at Westminster aforesaid, undertook and then and there faithfully promised the said Thomas, to pay him the said sum of money, whenever afterwards they the said John and Solomon should be there-to requested. AND WHEREAS ALSO the said John and Solomon afterwards, (to wit) on*

The Law and Justice

Thereto.

Declaration
in an action
brought
By J. Lane
Esq.

George Burdett, by his good friend
Great Britain, France, and Ireland, &c.
Master of the Bench, &c. R. 1781.
District, to wit, John Doe, late of England
in the county of Middlesex, gentleman,
Selwyn Mier, late of the same place, gent-
man, were attached to answer Thomas
a plea of trespass on the case, &c. and then
on the said Thomas, by John Doe his att-
counsel, that whereas the said Thomas
man, on the first day of January in the
our Lord 1781, at his own request, and
indebted to the said Thomas, in 2000 of Law-
ney of Great Britain, as well for work and
before that time done and performed by the
Thomas, for the said John and Selwyn,
and about the funeral of one William Burdett
deceased, at the special instance and request of
said John and Selwyn, as also for other
materials, and necessary things, used and con-
and about the doing and performing the
work and labour, and in and about the said
several, by the said Thomas, at the like
instance and request of the said John and
before that time found and provided. And
to indebted, the said John and Selwyn in
liberation thereof, afterwards, (to wit, on
same day and year aforesaid, at a place
aforesaid, undertook and then and there
fully promised the said Thomas, to pay
the said sum of money, whenever after
they the said John and Selwyn should be
to requested. AND WHEREAS
the said John and Selwyn afterwards,

on the same day and year aforesaid, at *Westminster* aforesaid, in consideration that the said *Thomas*, at the special instance and request of the said *John* and *Solomon*, had before that time done and performed other work and labour for the said *John* and *Solomon*, in and about the funeral of one *William Mort* deceased, and had also used and employed diverse other materials and necessary things, in and about the doing and performing the said work and labour, and in and about the said funeral, by the said *Thomas*, at the like special instance and request of the said *John* and *Solomon*, before that time found and provided; undertook, and then and there faithfully promised the said *Thomas* to pay him so much money as he therefore reasonably deserved to have of the said *John* and *Solomon*, whenever afterwards they the said *John* and *Solomon* should be thereto requested. And the said *Thomas* doth aver, that he therefore reasonably deserved to have of the said *John* and *Solomon*, other 30 l. of like lawful money, that is to say, at *Westminster* aforesaid, whereof the said *John* and *Solomon* afterwards, (to wit,) on the same day and year aforesaid, there had notice. (*Add counts for goods sold and delivered, for which see page 26.*) AND WHEREAS ALSO the said *John* and *Solomon*, afterwards, (to wit) on the same day and year aforesaid, at *Westminster* aforesaid, was indebted to the said *Thomas* in the farther sum of 30 l. of like lawful money, for money before that time laid out, expended, and paid by the said *Thomas*, for and to the use of the said *John* and *Solomon*, and in and about the funeral

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The Law and Practice

ral expences of one *William Mort* deceased, at the special instance and request of the said *John* and *Solomon*; and being so indebted, the said *John* and *Solomon* in consideration thereof, afterwards, (to wit) on the same day and year aforesaid, at *Westminster* aforesaid, undertook and then and there faithfully promised the said *Thomas*, to pay him the said last-mentioned sum of money whenever afterwards they the said *John* and *Solomon* should be thereto requested. *Nevertheless* the said *John* and *Solomon*, not at all regarding their said several promises, and undertakings, in form aforesaid made, but contriving, and fraudulently intending, to deceive and defraud the said *Thomas* in this behalf, have not, nor hath either of them, paid to the said *Thomas* the said several sums of money, or either of them, or any part thereof; (although the said *John* and *Solomon*, afterwards, (to wit) on the same day and year aforesaid, and often since at *Westminster* aforesaid, have been requested by the said *Thomas* to pay him the same.) But to pay the same to the said *Thomas*, they the said *John* and *Solomon* have, and each of them hath, altogether refused, and still do refuse; and the same are still unpaid, to the damage of the said *Thomas* of 40*l.* and therefore he brings his suit, &c.

Defendants
plead by two
attornies.

And the said *John*, by *Richard Fen* his attorney, and the said *Solomon*, by *Richard Ro* his attorney, come and defend * the force and

* If the pleas are delivered separately, they may be put either way in the issue, and record, separately, or in the form above set forth.

THE LAST WILL AND TESTAMENT

testament of one William de Wyke, deceased, in the spiritual business, and request of the said John and Thomas, and being to satisfy the said John and Thomas in consideration of the said will, (to wit) on the same day and year aforesaid, at Westminster aforesaid, the said John and Thomas, and their faithful persons, did the said Thomas, to pay him the said last recommended sum of money whenever the said John and Thomas should be thereof requested. Nevertheless the said John and Thomas, not at all regarding the said several promises, and undertakings, them aforesaid made, but contriving, and maliciously intending to deceive and defraud the said Thomas in the behalf, have not, nor have they of them, paid to the said Thomas, the said several sums of money, or part thereof, as they well should, (in honour of the said John and Thomas aforesaid, to wit) as the said John and Thomas aforesaid, and their heirs, or assigns, should, have been requested by the said Thomas to pay him the said sum of money, the same to the said Thomas, they the said John and Thomas have, and each of them, altogether refused, and will do still, and the same are thus unpaid, so the claim of the said Thomas is good, and therefore bring him suit, &c.

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And the said John, by Richard Fitz-Gilbert, clerk, and the said Thomas, by Richard Fitz-Gilbert, clerk, came and pleaded the said

* If these pieces are delivered separately, they are to be taken as the whole, and not as separate, in the form above set forth.

injury when, &c. and say, they did not undertake, and promise, in manner and form as the said *Thomas* hath above thereof complained against them: and of this they put themselves upon the country; and the said *Thomas* doth the like. Therefore the sheriff is commanded that he cause to come here in eight days of the Purification of the blessed *Mary*, twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. Because as well, &c.*

Middlesex, to wit, The Jury between *Jurata*, *Thomas Sable*, plaintiff, and *John Vie*, late of *Westminster*, in the county of *Middlesex*, gentleman, and *Solomon Mort*, late of the same place gentleman, defendants, in a plea of trespass on the case, is respited here until the morrow of the Holy Trinity, unless Sir *William de Grey* knight, the king's chief justice of the Bench here assigned, according to the form of the statute in that case made and provided, shall first come on Thursday the 24th day of June, at *Westminster*, in the great hall of pleas there, commonly called *Westminster-hall*, for default of the jurors because none came. Therefore let the sheriff have the bodies of the several persons mentioned in the panel an-

* In the *Common Pleas* the *placita* is wrote but once, except on the death or change of the chief justice, or on an old issue; then there must be two as in *B. R.* but after the plea it is usual to leave a blank before the *jurata*, for another *placita*, in case the cause should not be tried at the time intended.

The Law and Practice

nexed to the writ of *babeas corpora juratorum*. And be it known that the justices here in court, in this same term, delivered a writ thereupon to the under-sheriff of the county aforesaid, to be executed in due form of law, &c.

Postea.

Afterwards on the day, and at the place within contained, before Sir *William de Grey* knight, chief justice within written, *A. B.* gentleman, being associated to the said chief justice, according to the form of the statute, &c. comes the within-named *Thomas Sable*, by his attorney within mentioned, and the within-named *John Vie*, and *Solomon Mori*, come not. Therefore let the jury, whereof mention is within made, be taken against them by default; and the jurors of the said jury being called come, who to speak the truth of the premisses within written, being elected, tried, and sworn, upon their oath say, that the said *John* and *Solomon* did undertake and promise in manner and form as the said *Thomas* hath within complained against them. And they assess the damages of the said *Thomas*, on occasion thereof, over and above his costs and charges, to 20*l.* and for those costs and charges to 40*s.* Therefore, &c. (add the final judgment.)

Note. In the *Common Pleas* final judgments on *postea*s, and writs of inquiry, are entered by the clerk of the judgments.

Errors assigned.

AFTERWARDS, (to wit,) on *Wednesday* next after fifteen days from the day of *Easter*,

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The Law and Practice

...to the writ of *habere corpus* for *detinuit*.
And it is known that the justices were in
Court, in this term, delivered a writ there
upon to the under-sheriff of the county of
Kent, to be executed in due form of law, &c.

Afterwards on the day, and at the place
within aforesaid, before Sir William de Grey
Knight, Chief Justice within writer, of the
County of Kent, being associated to the said Chief
Justice, according to the form of the Statute
in that behalf made, the within-named Thomas
by his attorney at the aforesaid, and the
within-named John de Grey, and William de
Grey, &c. Therefore let the jury, which
remains in which cause, by the said
jury be default, and the names of the
jury being called over, who to speak the
truth of the premises within written, be
sworn, and sworn upon their oath by
the said John de Grey and William de Grey,
with promise in manner and form of the
Statute in that behalf made, to give
a verdict in the damages of the said Thomas
on occasion thereof, next and above his
costs and charges, to wit, and for those costs and
charges to him. Therefore, &c. (all as
before mentioned.)

And in the Common Pleas Final
judgment in *assumpsit*, and writ of
assumpsit, are granted by the Chief Justice of the
Common Pleas.

AFTERWARDS, (as will appear
by the writ and Plea) days from the day

Easter, in this same term, before our lord the king at *Westminster*, comes the said *John Vie*, by *Richard Fen* his attorney, and says, that in the record and proceedings aforesaid, as also in giving the judgment aforesaid, there is manifest error in this, (to wit, that by the record aforesaid, it appears, that the judgment aforesaid, in form aforesaid given, was given as well against the said *John Vie*, as against the said *Solomon Mort*; when in truth and in fact the said *Solomon Mort*, in the said record mentioned, before the trial of the issue in the said record joined, between the parties aforesaid, of the plea aforesaid, and before the giving the judgment aforesaid, (to wit,) on the 30th day of *January*, in the 20th year of the reign of our sovereign lord the now king, at *Westminster* aforesaid * died; and so the judgment aforesaid, in form aforesaid given, is erroneous, and void in law. And this he prays may be inquired of by the country; and that the judgment aforesaid, for the errors aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing; and that the said *John* may be restored to all things which he hath lost by occasion of the said judgment. And the said *John* prays a writ of our lord the king † to give notice to the said *Thomas Sable* to be before our said lord the king, to hear as well the record and proceedings aforesaid, as the matters aforesaid, for error assigned, and it is granted to him. By

Death of one
of the de-
fendants be-
fore trial.

* Departed this life. † To summon.

The Law and Practice

which it is commanded to the sheriff of *Middlesex*, that by good, &c. he make known to the said *Thomas* that he be before the lord the king on the morrow of the *Holy Trinity*, where-soever, &c. to hear as well the record and proceedings afore-said, as the matter afore-said for error assigned, if, &c. And further, &c. The same day is given to the said *John*, &c.

Scire faci.

Plaintiff e-
plies defend-
ant is living
and traverses
his death.

At which day the said *John*, by his attorney afore-said, comes before our lord the king, at *Westminster*, and offers himself against the said *Thomas*; and the sheriff, (to wit) *Thomas Wright*, Esq; and *Evan Pugh*, Esq; sheriff of the said county of *Middlesex*, returns, that by virtue of the said writ to him directed, by *James Strongarm*, and *William Chariot*, good, &c. he has given notice to the said *Thomas* to appear, &c. to hear, &c. as by that writ he was required. And the said *Thomas* being solemnly called, by *John Den* his attorney, comes, and says, that by reason of any thing by the said *John* above alleged, the said judgment ought not to be reversed, because he saith that the said *Solomon Mort* in the said plea mentioned, is yet in being, and alive, (to wit,) at *Westminster* afore-said. Without this, that the said *Solomon Mort*, before the trial of the said issue, in the said record joined, between the parties afore-said, in the plea afore-said, died in manner and form as the said *John* hath above alleged. And this he is ready to verify, wherefore he prays that the judgment afore-said may be in all things affirmed, &c.

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And the said *John* as before says, that the said *Solomon Mort* before the trial of the said issue in the said record joined, between the parties aforesaid, in the plea aforesaid, died, *Verification.* in manner and form as the said *John* hath above alleged; and of this the said *John* puts himself upon the country. And the said *Thomas* doth the like; it is therefore commanded to the sheriff that he cause to come before our lord the king, in three weeks of *Issue.* the *Holy Trinity*, wheresoever, &c. twelve, &c. by whom, &c. to recognize, &c. because as well, &c. The same day is given to the said parties there, &c.

Pleas before our lord the king at *Westminster*, of the term of *Saint Michael*, in the 21st year of the reign of our sovereign lord *George* the third, by the grace of God, of *Great Britain, France,* and *Ireland*, king, defender of the faith, &c. and in the year of our Lord 1780.

Middlesex, to wit, **The Jury** between *John Vie*, by his attorney plaintiff in error, and *Thomas Sable* defendant, of a plea of error in fact, is respited before our lord the king, until the octave of *Saint Hilary*, wheresoever the lord the king shall then be in *England*, unless the king's right trusty and well beloved *William Earl of Mansfield*, his majesty's chief justice assigned to hold pleas before the king himself, shall first come on *Wednesday* the 29th day of *November*, at *Westminster-hall* in the county of *Middlesex* aforesaid, according

to the form of the statute in such case made and provided, for default of the jurors because none of them did appear. Therefore let the sheriff have the bodies of the said jurors, to make the said jury, between the parties aforesaid, of the plea aforesaid, accordingly. The same day is given to the said parties, &c.

Postea.

Afterwards at the place, and on the day within mentioned, before *William* earl of *Mansfield*, the chief justice within mentioned; *John Way*, gentleman, being associated to the said chief justice, by form of the statute in in such case made and provided; come as well the said *John Vie*, within named, as the said *Thomas Sable* within mentioned, by their attornies aforesaid, and the jurors of the jury, whereof mention is within made, being solemnly called, *Come*: who to speak the truth of the premisses within written, being chosen by *Ballot*, elected, tried, and sworn, say on their oath, that the said *Soloman Mort* died in manner and form as the said *John Vie* hath thereof above alleged. Therefore, &c.

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C H A P. XIX.

*Containing the proceedings in the
Exchequer Chamber.*

THE foregoing precedents, and directions, complete the proceedings down to affirmance and reversal of judgments in several different suits; laid down in such a clear and practical form as to enable every practitioner to be perfect master of the subject: after the affirmance, or reversal, the recovery, or restitution, of the damages will be the next consideration, either by *ca. sa. fi. fa. or sci. fa.* against the principal, his bail, or the representatives of the bail, in case of their death; which ever way however the parties may be inclined to pursue for the best, genuine precedents of all those different writs will be found in the last Chapter.

We shall now adduce some general instructions on the subject of writs of error, issuing on judgments of the *King's Bench*, returnable in the *Exchequer Chamber*. In which there will not be a necessity of enlarging so much as hath been done in the other courts: because in the former almost all the proceedings are executed by the attorney: whereas in the latter the greatest part lies in the province of the clerk of the errors.

The matter contained in the third, fourth, and sixth chapters, (after substituting one court for

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for the other) will be a sufficient guide for issuing a writ of error returnable in the *Exchequer Chamber*, and the subsequent proceeding thereon, in which the courts may agree, as far as those chapters extend. This will save numberless repetitions which are ever disgusting to an intelligent reader. One court indeed varies from the other with relation to the disbursements, such as 2*l.* for the writ of error in *B. R.* and 2*l.* 2*s.* 6*d.* in *C. B.* the rules to transcribe, &c. 2*s.* in the former, and 4*s.* in the latter; and in some other particulars not material, the knowledge whereof will readily result from practice, and moreover will be seen in the chapter of fees and disbursements.

Bail on error brought in the *Exchequer Chamber*.

If an action of debt is brought upon a bond to perform covenants, and there is judgment by default, without craving *oyer* of the condition; in this case, upon a writ of error brought, the plaintiff in error must put in bail, because it doth not appear to the court, upon the face of the record, that the condition was *for performance of covenants*.

On a bottomree bond there must be bail.

Str. 476. M.
8 Geo. I.

Plaintiff recovered on a bottomree bond, and the defendant brought a writ of error, but put in no bail; and the question was on the words of the statute, *bonds for payment of money only.*

1847. The defendant having
 admitted that he now, in every respect, a bond
 for the amount of the money only, and therefore
 that must be paid.

The condition of a bond was that if the defendant
 should furnish a third person's name with
 him, the defendant would pay any sum not
 exceeding £1000 the defendant intended that some
 one should be named in a bond to be paid to him
 the value of £1000 the defendant
 must not be a person for the plaintiff
 and the defendant, and no bond being paid
 the plaintiff was not bound to pay the defendant
 the value of £1000 the plaintiff was not bound
 to the payment of money only, the court for
 the defendant; for there is no more
 than a bond, but still upon a quantum
 bond, still the bond is only paid into the
 court and is a legal bond; and
 the plaintiff is not bound to pay the defendant
 the value of £1000. (15th & 16th Car. 2. c. 11.
 16th Car. 2. c. 17.)

Though an executor by 16 Car. 2. c. 11.
 is not obliged to give bail in any case, yet
 an executor will furnish bail in any case
 and 16 Car. 2. c. 11, the court may take it, and it
 binds the parties.

It is not a writ of an outlawry till reversed.

Having a writ of error to reverse an outlawry
 the plaintiff proceeds, the defendant is not bound
 to move to quash the writ because he is not

only. *Et per cur'*: The contingency having happened, this is now, in every respect, a bond for the payment of the money only, and therefore there must be bail.

The condition of a bond was, that if the defendant furnished a third person's cellar with beer, the defendant would pay any sum not exceeding 100 l. the defendant pleaded that none was delivered, to which plaintiff replied, there was a delivery to the value of 80 l. the defendant demurred, and judgment for the plaintiff. Error was brought, and no bail being put in, execution was taken out. Upon consideration of 3 Jac. 1. c. 8. where the words are, *bonds for the payment of money only*, the court set aside the execution; for this is by no means a certain demand, but rests upon a quantum meruit; and the sum is only put into the replication in order to assign a breach: and the *añ being to restrain on a legal remedy*, must be strictly. (Cites 1 Keb. 613. Carib. 28. 2 Bulst. 54. 1 Lev. 117.)

Str. 1190. T.
Thrale v.
Vaughan.
16 Geo. II.

Though an executor by 16 & 17 Car. 2. c. 8. is not obliged to give bail in error, yet if an executor will submit to do as other defendants do, the court may take it, and it will bind the parties.

Str. 741.
Hil. 13 Geo.
I.

No bail in error of an outlawry till reversal.

Pending a writ of error to reverse an outlawry on mesne process, the defendant in error moved to *quash* the writ because no bail was

Str. 951.
Trin. 6 Geo.
II,

was

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The Law and Practice

was given. *Sed per cur'*: that is never done till the outlawry is reversed, and then we take bail to appear to an original, to be brought within two terms: and so it was done in this case.

Str. 882.
Hil. 2 Geo.
II.

A *capias ad satisfaciendum* was taken out against bail on a writ of error, and the court refused to set it aside: although by 1 *Rol. Abr.* 898. it is said that it will not lie.

If the writ of error is returnable the first day of term, the plaintiff in error is the same term to transcribe; to alledge diminution the term following; assign errors the next term, and to argue errors the fourth term: but if the defendant in error, instead of serving the rule to transcribe at the return of the writ, neglects it for a term or two; the plaintiff must transcribe in that term in which the rule is served: alledge diminution the same term, assign errors the term following, and argue errors the third term.

If the plaintiff in error does not enter the transcript on record the same term it is brought into the office, the defendant may: and whoever takes it out of the office first, is to keep it no longer than a copy is made, and then return it.

The plaintiff cannot demand oyer of his own writ, or plead any thing but an assignment of errors, which is in the place of a declaration.

In

OF ERRORS OF CIRCLES

In error in the *Exchequer* Court by Mr. King, *et al.*
against the rule in *transmission*.

De la King's Bench.

Hook and Gregory.

*It is the duty of the plaintiff in the Court of error
to show the error within eight days next
after notice being given to the said plaintiff
of his error, a writ will be entered.*

L. King, J. of the Court

Chief of the error

After review of this rule the defendant in
error is to have all the proceedings down to
the final judgment inclusive, as a copy of
them, as Mr. King's office, who makes the
transcriptation; which, when ready, the
defendant's attorney must examine it with the
Attorney General in the Treasury, (which if not
satisfactorily done, must be carried in before
the Court can be completed.) The Treas-
ury is open every day in term time, and
the Clerk of the Court, and it is after term,
the Clerk takes the *first* office in *Exchequer*
and will go down with him to *Windsor*
the Clerk of the Treasury, the Clerk of
the Treasury, and the *Exchequer*.

When the error on judgment by bill is
shown, the *Exchequer* Court, and the
Clerk of the Treasury, it is a duty of
the Clerk of the Treasury, the Clerk of the
Treasury, and the Clerk of the Treasury, the Clerk of
the Treasury, and the Clerk of the Treasury.

of Writs of Error.

In error in the *Exchequer Chamber* Mr. *Way Smith* grants the rule to transcribe. 93

In the *King's Bench*.

Hook and Gregory.

UNLESS the plaintiff in the writ of error certifies the record within eight days next after notice hereof given to the said plaintiff or his attorney, a nonsuit will be entered.

J. Way, R. Smith
Clerk of the errors.

After service of this rule the defendant in error is to leave all the proceedings down to the final judgment inclusive, or a copy of them, at Mr. *Way's* office, who makes the transcript therefrom; which, when ready, the defendant's attorney must examine it with the *King's Bench* roll in the *Treasury*, (which if not previously done, must be carried in before the transcript can be completed.) The *Treasury* is open every day in term time during the sitting of the court: and if it is after term, a clerk from the *Error-office*, in *Portugal Street*, will go down with him to *Westminster* with the keys of the *Treasury*, for which he charges 5 s. 10 d. extraordinary.

Serjeant

Writs of error on judgments by bill in the *King's Bench* go into the *Exchequer Chamber*. After completing the transcript it is delivered over by Mr. *Way*, the clerk of the errors of the *King's Bench*, to Mr. *Cecil*, who executes the

the rest of the business as deputy to Philip Fonnereau, esq; clerk of the errors in the Exchequer Chamber.

After completing the transcript, take out and serve rule to allege diminution.

Rule to allege
diminution.

In the Exchequer Chamber.

Hooke
and
Gregory

UNLESS the plaintiff in the writ of error allege diminution within eight days next after notice hereof given to the said plaintiff or his attorney, a nonsuit will be entered.

Philip Fonnereau,
Clerk of the errors

The writ of diminution is not an original writ, but issues out of the court where the writ of error is depending.

Cro. Jac.
130, 131.

After diminution is alleged, a certiorari issues whereby the thing is certified.

A judgment may be falsified, reversed, or avoided, in the first place, without a writ of error, for matters foreign to, or dehors the record, that is, not apparent upon the face of it; so that they cannot be assigned for error in the superior court, which can only judge from what appears in the record itself: and therefore if the whole record is not certified

OF DISCREPANCY

or has been examined, by the superior court, the party against thereby (in both civil and criminal cases) may allege a discrepancy of the record, and cause it to be rectified.

No discrepancy to be alleged on records out of the court of appeals.

After a writ of error is pleaded, neither party may allege discrepancy without leave of the court.

But the court may order a recital of the discrepancy in the writ, to allow, but not to reverse a judgment.

CHAR.

But the writ of *discontinuance* is a writ of *discontinuance*, the writ of the court in the *Exchequer Chamber*.

After completing the transcript, and
and serve rule in alleged discontinuance.

Relinquish *In the Exchequer Chamber.*
discontinuation

Hooks
and
Gregory

If the writ of the plaintiff in the writ of
alleges discontinuance within eight days
after notice thereof given to the
plaintiff or his attorney, a writ of
discontinuation.

Philip Foner
Clerk of the Court

The writ of discontinuance is not an
writ, but issues out of the court where
writ of error is depending.

Ch. 10.
130. 131.

After discontinuance is alleged, a writ
issues whereby the thing is corrected.

A judgment may be set aside, reversed
avoided, in the first place, without a writ
error, for matters foreign to, or not on the
record, that is, not apparent upon the face
of it; so that they cannot be alleged by writ
in the superior courts, which can only be
from what appears in the record itself.
therefore if the whole record is not correct

of Writs of Error.

or not truly certified, by the inferior court, the party injured thereby (in both civil and criminal cases) may allege a *diminution* of the record, and cause it to be rectified.

No diminution to be alleged on records out Siderf. 403
of inferior courts.

After in *nullo est erratum* pleaded, neither party can allege diminution without leave of the court.

But the court may order a *certiorari ad informandum conscientiam curiæ*, to affirm, but not to reverse a judgment.

C H A P. XX.

*The certiorari to certify diminution of bill,
bail, and warrant of attorney.*

GEORGE the third, by the grace of God,
of Great Britain, France, and Ireland, king,
defender of the faith, &c. To our trusty and
well beloved *William* earl of *Mansfield*, our
chief justice assigned to hold pleas in our
court before us, greeting. Because in the re-
cord and proceedings, and also in the rendi-
tion of the judgment, of a plea which was in
our court before us, by bill, between *Ann Hook*,
and *John Gregory*, of a plea of trespass on the
case, it is said manifest error hath happened,
to the great damage of the said *John*, as by
his complaint we have understood; the record
and proceedings of which said judgment we
have lately caused to be brought before our
justices of our *Common Bench*, and our barons
of our *Exchequer*, of the degree of the *coif*,
to correct the errors in the same, according to
the form of the statute, in such case made and
provided, in the chamber of our *Exchequer*
aforesaid; and the said *John*, appearing in the
same *Exchequer Chamber*, hath said, that
whereas by the record aforesaid, sent to the
same justices and barons, it appears, that the
said *Ann*, in *Easter* term, in the 20th year of the
reign of his present majesty king *George* the
third, exhibited into the said court of our said
lord the king before the king himself, her bill
against the said *John* in the plea aforesaid, and
that

that the said *John* was in the custody of the marshal of our marshalsea, before us: nevertheless the said *John* at or before the time of exhibiting the bill of the said *Ann*, was not in the custody of the marshal of our marshalsea, before us: neither was any bail ever filed for him in the said court; nor any such bill, and the continuances thereon indorsed in our said court, of the same term, before us of record remaining. And that whereas by the record aforesaid, so as aforesaid sent, it also appears, that the said *Ann* constituted one *Richard Fen* her attorney against the said *John* in the plea aforesaid; nevertheless the said *John* hath said, that the said *Richard Fen* had no warrant of attorney thereof on record filed: and we being willing to be certified of the premisses aforesaid, in this behalf, command you, that the files of the bails of the county of *Middlesex*, and of the bills in the said *Easter* term, in the 20th year aforesaid, in your custody; and also the rolls, and other memorandums of the warrants of attorney, of the same term, in your custody of record, likewise remaining, being searched, what of the said bail, bill and continuances thereon indorsed, and warrant of attorney aforesaid, you shall find, to our justices and barons aforesaid, immediately into the chamber of our *Exchequer* aforesaid, you certify, together with this writ. Witness, &c. *

* Sir William de Grey, &c. writs &c. issuing out of the *Exchequer Chamber* are always witnessed by the chief justice of the *Common Pleas*.

*The answer of William Earl of Mansfield,
the chief justice within named.*

Having searched the files of bails of the county of Middlesex, and also of the bills of Easter term within written, being in my custody of record; I find no bail or bill between the parties within written, in the plea within specified, filed of record: having searched likewise the rolls, and other memorandums of the warrants of attorney of the same term, between the parties within-written, being likewise in my custody on record, I there find no warrant of attorney filed on record. And this I certify to the justices of our lord the king of the Common Bench, and the barons of the Exchequer, within written, as I am commanded.

Mansfield.

Keb. 211.

Errors cannot be entered until the *certiorari* of diminution alledged, and the rule to assign errors is out.

The term after diminution is alledged, serve the rule to assign errors: after which the judgment may be affirmed as before mentioned: the plaintiff pays 8 s. on alledging diminution, and 16 d. *per fo.* for the transcript; and 8 s. on assigning errors, (to Mr. Cecil;) the writ of diminution issues only in special cases: and if the errors to be assigned are special, they must be drawn by the attorney, signed by counsel, and delivered to the clerk of the errors in the *Exchequer chamber*, on treble penny stamps.

OF TRIALS OF ERROR.

99

in the Judge's Chamber.

Gregory and Hook.

On the plaintiff in the case of error. It has been
said, within eight days next after the return
of the writ given to the said plaintiff or
his attorney, a writ shall be returned.

Philip Fournereau,

clerk of the court.

If the errors assigned are the general errors,
the defendant may immediately plead in writ
of error.

After this plea the plaintiff is never suffer-
ed to amend general errors.

After defendant hath pleaded in writ of
error, neither party can allege demurrer,
nor have of the court; although the
court may order a *certiorari* or *information*
in the case, to affirm, but not to reverse
judgment.

It is incumbent on the plaintiff, if he do not
have his errors argued, to give notice to the
clerk of the court in the
Judge's Chamber, and to deliver four
copies of the books to the judges of the court of
error. The plaintiff is to deliver
four paper books to the clerk of the
court, four days before the day of ar-

See chapter XII. in the end.

H. C.

CHAP.

The Late and Benign

The answer of William Earl of Mansfield
the chief justice when asked,

Having searched the files of bills of the court
of chancery, and also of the bills of Exchequer
with a view to bring in an act of law,
I find no bill or bill because the parties are
in question, in the plea within specified time,
and having searched likewise the rolls, and
also manuscripts of the court, of all years
of the past term, between the parties and
written, being likewise in my custody, and
I there find no record of any bill or bill
and. And this I certify to the judges of the
lord the king of the Common Bench, and
before of the Exchequer, under written, and
as returned.

Mansfield

Errors cannot be entered until the decree
of diminution alleged, and the rule to
errors is out.

The term after diminution is allowed
leave the rule to allege errors: after which
the judgment may be affirmed as before
regard: the plaintiff pays 5 s. on alleged
reduction, and 10 s. per fol. for the writ
and 5 s. on alleged errors. (To Mr. Clerk)
writ of diminution shall only in special cases
and if the errors to be alleged are specified,
shall be drawn by the attorney, signed
and sealed, and delivered to the clerk of the
court in the Exchequer chamber, on or before
the 24th day.

In the Exchequer chamber.

Gregory and Hook.

Unless the plaintiff in the writ of error as- Rule to as-
signs errors, within eight days next after sign errors,
notice hereof given to the said plaintiff or
his attorney, a nonsuit will be entered.

Philip Fonnereau,
clerk of the errors.

If the errors assigned are the *general errors*,
the defendant may immediately plead in *nullo
est erratum*.

After this plea the plaintiff is never suffer-
ed to amend *general errors*.

After defendant hath pleaded in *nullo est
erratum*, neither party can alledge diminution
without leave of the court; although the
court may order a *certiorari ad informandum
conscientiam curiæ*, to affirm, but not to reverse
a judgment.

It is incumbent on the plaintiff, if he de- Rule *Easter*
signs to have his errors argued, to give ten 33 Car. II.
days notice to the clerk of the errors in the
Exchequer Chamber, and to deliver four
paper books to the judges of the court of
Common Pleas; and the defendant is to deli-
ver four paper books to the barons of the
Exchequer, four days before the day of ar-
gument*.

* See chapter XII. at the end.

C H A P. XXI.

Error assigned in the Exchequer chamber.

Entry of the
record trans-
mitted into
Exchequer
chamber.

Error assign-
ed.

Afterwards, (to wit) *Monday* the 5th day of *June*, in the 20th year of the reign of our sovereign lord *George* the third, king of *Great Britain*, &c. a transcript of the record and proceedings aforesaid, between the parties aforesaid, of the plea aforesaid, with all things concerning the same, by means of a certain writ of our lord the king, for correcting errors, prosecuted by the said *John* against the said *Richard*, of and upon the premises, by the court of the lord the king before the king himself here, was transmitted before the justices of our said lord the king of his court of *Common Bench*, and barons of the *Exchequer* of the said lord the king, of the degree of the *coif*, in the *Exchequer Chamber*, according to the form of the statute, made* in the 27th year of the reign of the lady *Elizabeth* late queen of *England*. And the said *John* appearing in the *Exchequer Chamber* aforesaid, assigned certain matters for error in the record and proceedings aforesaid, and in giving the judgment aforesaid, for reversing the said judgment; to which the said *Richard* also appearing in the said court of *Exchequer*

* In the parliament of the lady *Elizabeth* late queen of *England*, held at *Westminster* on the 23d day of *November*, in the 27th year, &c.

CHAP. XXV.

Error assigned in the Exchequer Chamber.

*Term of the
12th year
of the reign
of Edward
the first
in the
Exchequer
chamber.*

*Q. Fitzthomas, (to wit) Menden the son
of John, in the sixth year of the reign
of our sovereign lord George the third, King
Great Britain, &c. a transcript of the record
and proceedings aforesaid, between the
defendant, of the plea aforesaid, and
things concerning the same, by means
written writ of error, into the King, by the
said error, redressed by the said King, and
the said record, of and upon the petition
by the defendant of the said King, and
King himself being, was transmitted before
justices of our said King the King of Great
Britain, and thence to the
year of the said lord the King, of the
or ten years, in the Exchequer Chamber,
according to the form of the Statute, made
in the sixth year of the reign of the said
King the first of England. And the
said error appearing in the Exchequer Chamber,
and the said record and proceedings aforesaid, and
giving the judgment aforesaid, for reversal
of the said judgment, to which the said
error appearing in the said court of error.*

*Term 12th
year.*

*In the fourth year of the said King the first
of England, and in the sixth year of the said
King, in the said year, &c.*

Chamber, pleaded, that there was no error Plea in nullo
est erratum. either in the record and proceedings aforesaid, or in giving the judgment aforesaid. And afterwards, (to wit) on *Friday* the 10th day of *November*, in the 21st year of the reign of our said lord the king, as well the record and proceedings aforesaid, and the judgment aforesaid, given in form aforesaid, as also the matters by the said *John* for error assigned, being by the court of *Exchequer Chamber* maturely * examined, and fully understood, for that it seemed to the said court of *Exchequer Chamber*, that there was no error, either in the record and proceedings aforesaid, or in giving the judgment aforesaid. Therefore it Affirmance. was then and there considered by the said court of *Exchequer Chamber*, that the judgment aforesaid be in all things affirmed, and do stand in it's full force, strength, and effect; (the matters aforesaid for error assigned in any wise notwithstanding.) And it was further then and there considered by the said court, that the said *Richard* recover against the said *John* 18 l. by the court there adjudged to the said *Richard* by his assent, according to the form of the statute in that case made and provided, for his damages, costs, and charges, which he hath sustained by occasion of the delay of execution of the judgment aforesaid, by means of the prosecution of the said writ of error. And thereupon as well Remittance
of the Re- the record aforesaid, as the proceedings of the justices of the *Common Bench*, and barons cord.

* Diligently.

The Law and Practice

of the *Exchequer* aforesaid, before them had of and upon the premisses, were remitted into the court of our said lord the king before the king himself, by the said justices and barons, according to the form of the statute in such case made and provided, and now remain in the said court of the said lord the king before the king himself.

Satisfaction
acknowledg-
ed.

Afterwards, (to wit,) on *Tuesday* next after 15 days of Saint *Martin*, in the 21st year of the reign of the said lord the now king, before the king himself, at *Westminster* came the said *Richard*, by his attorney aforesaid, and acknowledged, that he had been satisfied by the said *John*, for the damages, costs, and charges aforesaid. Therefore let the said *John* be quit of the said damages, costs, and charges, &c.

Salk. 24. 736.

C H A P. XXII.

Of the proceedings in the house of lords.

FIRST brought in parliament returnable, 22d. 23d. day on which it is prorogued: the 2d. 3d. day on which it is a *superficies*.

The lords have declared, and so is the law, 22d. 23d. day, that a writ of error doth not de-
termine by prorogation of parliament; but
the lords and are to be proceeded upon
as they stood at the dissolution of
the parliament.

To obtain a writ of error in parliament,
the petitioner to the king for his
writ, which petition has the allowance of
the attorney general, and then the king writes
a writ of *facias*: whereupon the
error is made out by the clerk;
and the king's warrant, (which
is made by him) before his own face.

Writs of error in parliament are made return-
able, either on a *provisional* or *final*
return, because during the session they
are usually, and have no vacation.

All of the returns are *inquisitio parliamenti*, 3 Feb. 1560.

When the bail below prading a writ of error, the
parliament is a contempt, and breach of

The Law and Equity

of the *Embrey* aforesaid, before them and
 of and upon the premises, were admitted into
 the court of our said lord the king before the
 king himself, by the said justices and barons
 according to the form of the Statute in such
 case made and provided, and now remain in
 the said court of the said lord the king be-
 fore the king himself.

Subscribed
 acknowledged
 at

Afterwards, (to wit) on Tuesday next af-
 ter 15 days of Saint Martin, in the 21st year
 of the reign of the said lord the now king
 before the king himself, at *St. James* and
 the said *Richard*, by his attorney aforesaid, in
 acknowledged, that he had been favored by
 the said *John*, for the damages, costs, and charges
 aforesaid. Therefore let the said *John* be
 of the said damages, costs, and charges, &c.

102. 24 236

C H A P. XXII.

Containing the proceedings in the house of lords.

ERROR brought in parliament returnable ^{3 Keb. 231.} at a day on which it is prorogued: the Sid. ^{413.} court inclined that it is a *superfedeas*.

The lords have declared, and so is the law ^{Raym. 383.} at this day, that a writ of error doth not determine by prorogation of parliament; but they continue and are to be proceeded upon *in statu quo*, as they stood at the dissolution of the last parliament.

To obtain a writ of error in parliament, there must be a petition to the king for his warrant; which petition has the allowance of the attorney general, and then the king writes at the top of it, *fiat justitiæ*: whereupon the writ of error is made out by the curfitor; who charges 5 *l.* for the kings warrant, (which is procured by him,) besides his own fees.

Writs of error in parliament are made returnable immediately, or on a prorogation *ad prox^{imam} parliament*. because during the session they sit continually, and have no vacation.

Most of the returns are *instanti parlamento*. ^{3 Keb. 256.}

Suing the bail below pending a writ of error in parliament is a contempt, and breach of ^{685.} privilege.

The Law and Practice

This writ, when made out by the curfitor, must be taken to and allowed by Mr. *Way*, the clerk of the errors in the *King's Bench*, who takes 4 *l.* for the allowance ; a copy of the allowance must be served in the same manner as in other writs of error.

The chief justice of the *King's Bench* takes the record and transcript to the lords, in full parliament, with whom, after they are examined, he leaves the latter, but the record is brought back again : no *scire facias* issues on this writ ; but on motion made in the house by a peer, on behalf of the defendant in error, a day is appointed for the plaintiff in error to assign errors. He is allowed eight days for that purpose ; and if errors are not assigned in that time, the clerk of the parliament will grant *remittitur*.

If plaintiff in error alleges *diminution*, and prays a *certiorari*, the same is to be issued without any motion, and to be returned in ten days ; which if not done, or good cause shewn to the house to the contrary, the plaintiff will lose the benefit of his writ.

To obtain a hearing, the plaintiff in error must get a peer to move the house, that on assigning errors, the defendant may appear to make his defence.

After issue joined in *nullo est erratum*, get a peer to move the house to appoint a day for hearing the errors. At which day both parties

the court extend by counsel, usually two on a side, more is not allowed. If printed cases are delivered by both parties, or either party, to the court, they must be signed by counsel. On the day, the lords either affirm or reverse the judgment; on which the clerk of the parliament remands the transcript of the record, into the K. B. with the allowance or reversal to be entered on record of the said court, which awaits execution, &c.

After verdict, error brought in the King's Bench on a judgment of the Common Pleas, *St. 317.* and not put in, if such judgment be affirmed, and error afterwards brought in the house of lords, there must be a new recognizance; and the same if brought in parliament from the Exchequer Chamber, or a judgment of the King's Bench, affirmed by the Exchequer Chamber.

Upon a writ by original in the King's Bench, *St. 117.* and writ of error in the house of lords brought thereon; if the judgment is reversed, the lords will give the same judgment, as the court of King's Bench should have pronounced.

The lords examine the errors, with the assistance of the judges, in all affairs of weight and difficulty. If the judgment is reversed, the chancellor, by order of the house, proceeditur execution accordingly: If affirmed, the record is amended, and the court of King's Bench will give execution.

The Law and Practice

This writ, when made out by the clerk, must be taken to and allowed by Mr. Serjeant, the clerk of the court in the King's Bench, who takes 4 l. for the allowance; a copy of the allowance must be served in the same manner as in other writs of error.

The chief justice of the King's Bench sends the record and transcript to the lords, in the parliament, with whom, after they are examined, he leaves the latter, but the record is brought back again: no *scire facias* effect of this writ; but on motion made in the house by a peer, on behalf of the defendant in error, a day is appointed for the plaintiff in error to assign errors. He is allowed eight days for that purpose; and if errors are not assigned in that time, the clerk of the parliament will grant *venue*.

If plaintiff in error alleges *discontinuance*, he prays a *certiorari*, the same is to be issued without any motion, and to be returned in ten days; which if not done, or good cause shown to the house to the contrary, the plaintiff will lose the benefit of his writ.

To obtain a hearing, the plaintiff in error must get a peer to move the house, that on assigning errors, the defendant may appear and make his defence.

After notice joined in *nullo est erratum*, a peer to move the house to appoint a day for hearing the errors. At which day both

ties must attend by counsel, usually two on a side, more is not allowed. If printed cases are delivered by both parties, or either party, to the lords, they must be signed by counsel. On the *bearing*, the lords either affirm or reverse the judgment; on which the clerk of the parliament remands the transcript of the record, into the *K. B.* with the affirmance or reversal to be entered on record of the said court, which awards execution, &c. Dyer 385.

After verdict, error brought in the *King's Bench*, on a judgment of the *Common Pleas*, and bail put in; if such judgment be affirmed, and error afterwards brought in the house of lords, there must be a new recognizance; and the same if brought in parliament from the *Exchequer Chamber*, on a judgment of the *King's Bench*, affirmed by the *Exchequer Chamber*. Salk. 97.
Str. 527.
T. 8 Geo. I.
Colebroke
v. Diggs.

Upon a suit by original in the *King's Bench*, and writ of error in the house of lords brought thereon; if the judgment is reversed, the lords will give the same judgment, as the court of *King's Bench* should have pronounced. 4 Mod. 127.

The lords examine the errors, with the assistance of the judges, in all affairs of weight and nicety. If the judgment is reversed, the chancellor, by order of the house, pronounces execution accordingly; If affirmed, the record is remanded, and the court of *King's Bench*, will issue execution. Instr. Cl. par. 1. p. 301.

Upon

3 Bur. Rep.
1823.

Upon error in the house of lords, on judgment in ejectment in the *King's Bench*, the court will compel the plaintiff in error, to enter into a rule to restrain him from committing waste *pendenti lite*.

Shower's
cases in par-
liament 12.

The question was, (upon general errors assigned in parliament) if these words, *He is disaffected to the government* (spoken of a justice) be *actionable*? upon debate, the judgment was reversed, the words being not actionable.

Assignment of errors in parliament.

Afterwards, (that is to say) on the first day of *December*, in the 21st year of the reign of our sovereign lord *George* the third, king of *Great Britain*, &c. before the king himself in parliament, the said *John*, by *John Den* his attorney, comes; and says, that in the record and process aforesaid, and also in giving the judgment aforesaid, there is manifest error in this, (to wit) that the declaration aforesaid, and the matters therein contained, are not sufficient in law for the said *Richard* to have and maintain his aforesaid action against the said *John*; therefore in that there is manifest error: there is also error in this (to wit) that by the record aforesaid, it appears that the judgment aforesaid, in form aforesaid given, was given for the said *Richard* against the said *John*: whereas, by the law of the land, the said judgment ought to have been given for the said *John*, against the said *Richard*, and the said *John* prays that the judgment

that the said, for the errors aforesaid, and
the errors in the record and proceedings
aforesaid, may be reversed, annulled, and al-
together held for nothing, and that it may
be referred to all things which be had and by
reason of the said judgment, &c.

Argument of errors in parliament, af-
firmance in the Exchequer cham-
ber

Observation (that is to say) on the eighth
day of December, in the 21st year of the reign
of our sovereign lord George the third, king
of Great Britain, &c. Before the said lord the
king himself, and peers, and great men, in
the present parliament assembled, at West-
minster, in the county of Middlesex, the said
John, by John Den his attorney, comes, and
says, that in the record and proceedings aforesaid,
as also in giving and affirming the judg-
ment aforesaid, there is manifest error, in
this, to wit, that by the record aforesaid, it
appears, that the judgment aforesaid, given by
the said court, of our said lord the king, be-
fore the king himself, at Westminster aforesaid,
was given for the said Richard against the said
John; whereas, by the law of the land, the
said judgment ought to have been given for
the said John against the said Richard, there-
fore is that there is manifest error, there is
also error, in affirming the said judgment, be-
cause he says, that the judgment aforesaid was
affirmed in the court of our lord the king of
Exchequer Chamber, at Westminster aforesaid,

The Law and Justice

1207. *1207. A writ in the house of lords, on July 1207. made in opposition to the King's Bench, the court will compel the plaintiff in error, to enter into a rule to restrain him from continuing waste against the.*

1207. *1207. The question was, (upon general errors of law in parliament) if their words, *that the effect is for the government* (spoken of a justice) be actionable? upon debate, the judgment was reversed, the words being not actionable.*

Assignment of errors in parliament.

1207. *1207. Afterwards, (that is to say) on the first day of December, in the first year of the reign of our lordship lord George the third, King of Great Britain, &c. before the king assembled in parliament, the said Yoke, by John Doe his attorney, came, and says, that in the record and process aforesaid, and also in giving the judgment aforesaid, there is manifest error in this, (to wit) that the declaration aforesaid, and the matters therein contained, are not sufficient in law for the said Richard to have and maintain his aforesaid action against the said John; therefore in that there is manifest error: there is also error in this (to wit) that by the record aforesaid, it appears that the judgment aforesaid, is for the aforesaid given, was given for the said Richard against the said John; whereas, by the law of the land, the said judgment ought to have been given for the said John, against the said Richard, and the said Yoke prays that the judgment*

ment aforesaid, for the errors aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and that he may be restored to all things which he hath lost by occasion of the said judgment, &c.

Assignment of errors in parliament, after affirmance in the Exchequer chamber.

Afterwards (that is to say) on the eighth day of *December*, in the 21st year of the reign of our sovereign lord *George* the third, king of *Great Britain*, &c. before the said lord the king himself, and peers, and great men, in this present parliament assembled, at *Westminster*, in the county of *Middlesex*, the said *John*, by *John Den* his attorney, comes, and says, that in the record and proceedings aforesaid, as also in giving and affirming the judgment aforesaid, there is manifest error, in this, (to wit) that by the record aforesaid, it appears, that the judgment aforesaid, given by the said court, of our said lord the king, before the king himself, at *Westminster* aforesaid, was given for the said *Richard* against the said *John*: whereas, by the law of the land, the said judgment ought to have been given for the said *John* against the said *Richard*, therefore in that there is manifest error; there is also error, in affirming the said judgment, because he says, that the judgment aforesaid was affirmed in the court of our lord the king of *Exchequer Chamber*, at *Westminster* aforesaid,
before

before the justices of the *Common Bench*, and the barons of the said *Exchequer*; whereas no such affirmance of the said judgment ought to have been given thereon, but that by the law of the land the said judgment ought to have been reversed: and therefore in that there is manifest error. And the said *John* prays that the judgment aforesaid for the errors aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled, and intirely held for nothing, and that he may be restored to all things which he hath lost, by occasion of the said judgment and the affirmance thereof, as aforesaid, and that the said *Richard* may rejoin to the errors above assigned, &c.

1 Vent, 100.

A writ of error brought first in the *Exchequer Chamber*, and discontinued; then another sued out in parliament, this second writ is a *superfedeas*.

Writ of Error, *tam in redditione judicii, quam in adjudicatione executionis.*

Cr. Jac. 384.
Raym, 100.

Bail may bring this writ of error upon a judgment recovered against them by *scire facias*.

Idem.

But bail cannot join the principal with himself, or themselves, *in a writ of error*. Error brought by bail, on a judgment against them by *scire facias*, in an inferior court; it was *tam in redditione judicii* against the principal: *quam in adjudicatione* against the bail; but was quashed

against the principal, and the bill
was filed in order to reverse the judgment
given them.

This will lie on a judgment for the plaintiff, as
of the King's Bench, afterwards affirmed in the Year 1661.
by the Exchequer Chamber, and an award of execution
in the King's Bench, on a *scire facias*
return by plaintiff. The defendant cannot
have a writ of error in the Exchequer Cham-
ber, *quia in redditione facias, quoniam in executione*
non est error, for the merits of the first
judgment have been examined there, and such
error as it is no *superficies* to the execution,
which if found out, is no contempt.

Overrule if there had been an writ of error before
the original judgment.

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before the judges of the Common Bench, and the barons of the said Exchequer, and to such affirmance of the said judgment ought to have been given, whereas, that that in the law of the land the said judgment ought to have been reversed, and the error therein is manifest error. And the said writ says that the judgment aforesaid for the errors aforesaid, and other errors in the writ and proceedings aforesaid, may be reversed, annulled, and entirely held for nothing, and that he may be referred to all things which he hath lost, by occasion of the said judgment and the affirmance thereof, as aforesaid, and that the said writ may repair to the errors above assigned, &c.

1 Vent. 100.

A writ of error brought first in the Exchequer Chamber, and discontinued, then another sued out in parliament, this second writ is a *super-judicium*.

Writ of Error, now in addition judicium, given in adjunction executions.

C. 1 Jac. 384.
Kern, 100.

Bail may bring this writ of error upon a judgment recovered against them by *super-judicium*.

1 Jac.

But bail cannot join the principal with himself, or themselves, in a writ of error. Error brought by bail, on a judgment against them by *super-judicium*, in an inferior court: it was *non in addition judicium* against the principal: *plene in adjunction* against the bail; but was qualified

quashed against the principal, and the bail proceeded in order to reverse the judgment against them.

This writ lies on a judgment for the plaintiff in the *King's Bench*, afterwards affirmed in the *Exchequer Chamber*, and an award of execution in the *King's Bench*, on a *scire facias* brought by plaintiff. The defendant cannot have a writ of error in the *Exchequer Chamber*, *tam in redditione judicii, quam in adjudicatione executionis**, for the merits of the first judgment have been examined there, and such second writ is no *superseas* to the execution, which if sued out, is no contempt.

Otherwise if there had been no writ of error before on the original judgment.

C H A P. XXIII.

A writ of error to reverse a judgment given in the King's Bench in Ireland.

TO bring a writ of error in the *King's Bench* in *England*, to reverse a judgment given in the *King's Bench* in *Ireland**, a writ must be procured from the curfitor, directed to the chief justice of the *King's Bench* in *Ireland*, requiring him to summon the plaintiff in the action there to appear in the *King's Bench* in *England*, to answer the errors; whereupon a transcript of the record is sent over, (not the record itself.)

When the transcript comes over from *Ireland*, it is lodged with Mr. *Heberden*, of whom the agents on both sides procure copies. And if the plaintiff in error doth not bring in the transcript, or a certificate thereof from Mr. *Heberden*, the curfitor will make out a writ *de executione judicii*, directed to the chief justice in *Ireland*. The House of Peers in *Ireland* hath no jurisdiction either to affirm or reverse any judgment or decree made there.

Stat. 6 Geo.
L. c. 5. f. 5.

To compel plaintiff in error to assign errors.

On motion the court will order the plaintiff to assign errors within a week after service of the rule.

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As to the service thereof. If the plaintiff in error, his attorney or agent, cannot be found, the court (on motion and affidavit) will order that sticking up the rule in the King's Bench office shall be good service on the plaintiff in error.

There must be a rule of court to assign error, for there is no *ipse factus* to hear error in this case.

On assignment of errors from Ireland there must be an affidavit annexed, verifying the same.

The plaintiff in error must move the court joining in rule for defendant in error to join in error, and he has four days after service joined to join in error.

When the errors are argued, if the judge of the Court is reversed, a writ must be sent in 368. The chief justice in Ireland, commanding, shall be able to reverse it, and to award execution; so that the judgment is not actually reversed here, but there. And when the judgment of Ireland is affirmed in England, no writ of execution can be granted here; but, on allowance of the judgment, a writ, reciting all the proceedings, is made out, directed to the judges of the King's Bench in Ireland, requiring them to issue process of execution.

A writ of error to reverse a judgment given in the King's Bench in Ireland.

TO bring a writ of error in the King's Bench in England, to reverse a judgment given in the King's Bench in Ireland, a writ must be procured from the exchequer, directed to the chief justice of the King's Bench in Ireland, requiring him to summon the plaintiff in the action there to appear in the King's Bench in England, to answer the errors; whereupon a transcript of the record is sent over, (not the record itself.)

When the transcript comes over from Ireland, it is lodged with Mr. Herbert, of whom the agents on both sides procure copies. And if the plaintiff in error doth not bring in the transcript, or a certificate thereof from Mr. Herbert, the exchequer will make out a writ *de executione justitiæ*, directed to the chief justice in Ireland. The House of Peers in Ireland hath no jurisdiction either to affirm or reverse any judgment or decree made there.

Stat. 6 Geo.
1. c. 3. s. 5.

To compel plaintiff in error to assign errors.

On motion the court will order the plaintiff to assign errors within a week after service of the rule.

As to the service thereof. If the plaintiff in error, his attorney or agent, cannot be found, the court (on motion and affidavit) will order that sticking up the rule in the *King's Bench* office shall be good service on the plaintiff in error.

There must be a rule of court to assign Note. error, for there is no *scire facias* to hear errors in this case.

On assignment of errors from *Ireland* there must be an affidavit annexed, verifying the same.

The plaintiff in error must move the court for rule for defendant in error to join in error. ^{Joining in error.} and he has four days after service thereof to join in error.

When the errors are argued, if the judgment is reversed, a writ must be sent to the chief justice in *Ireland*, commanding him to reverse it, and to award execution; so that the judgment is not actually reversed here, but there. And when the judgment of *Ireland* is affirmed in *England*, no writ of execution can be granted here; but, on affirmance of the judgment, a writ, reciting all the proceedings, is made out, directed to the judges of the *King's Bench* in *Ireland*, requiring them to issue process of execution. ^{Cro. Car. 368. Salk. 321}

Assign.

*Assignment of error on a judgment after
affirmance in Ireland.*

Afterwards, to wit, on *Tuesday* next after fifteen days of *St. Martin*, in this same term, before our lord the king at *Westminster*, comes the said *John*, by *John Den* his attorney, and says, that in the record and proceedings aforesaid, and in giving the judgment aforesaid, and also in affirming the same, there is manifest error in this, to wit, that by the record and affirmance aforesaid, it appears, that the judgment aforesaid, in form aforesaid given, was given and affirmed for the said *Richard* against the said *John*: whereas by the law of the land of the said kingdom of *Ireland*, the said judgment ought to have been given for the said *John* against the said *Richard*,—therefore in that there is manifest error. Wherefore *the said John prays*, that the judgment aforesaid, and the affirmance aforesaid, for the errors aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing; and that the said *John* may be restored to all things which he hath lost by occasion of the said judgment, &c.

For a joinder hereto, and all subsequent proceedings, see *Error in the King's Bench*.

CHAP. XXIV.

Supplemental Cases determined in the courts of King's Bench and Common Pleas.

Judgment. Error abates by the death of either the plaintiff in error, but not of the defendant, either before or after errors assigned.

Judgment in the *Common Pleas* against four in trespass, who brought error in the *King's Bench*; after the record was certified one of the plaintiffs in error died; the writ stated, and the plaintiff in the original action had execution on suggesting the death of the party upon record, without suing out *pro facio*.

Where error abates by the act of the plaintiff in error, if he sues out a new writ *Oct. 66.* in error it is no *superfedeas*, the defendant may have execution. Otherwise, when the error abates by the act of God or without fault of the party. *Latch 57. 58.*

If error abates by the death of the parties, *3 Keb. 466.* or of the justice, the second writ shall be a *pro facio*.

But in these cases, on error abating by the death of the chief justice, leave was given to take out execution. The writ of error

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Assignment of error on a judgment after
affirmance in Ireland.

Afterwards, to wit, on Tuesday next after fifteen days of St. Martin, in the next term, before our lord the king at Westminster, comes the said John, by John Doe his attorney, and says, that in the record and proceedings aforesaid, and in giving the judgment aforesaid, and also in affirming the same, there is manifest error in this, to wit, that by the record and affirmance aforesaid, it appears, that the judgment aforesaid, for term aforesaid given, was given and affirmed for the said Richard against the said John; whereas, by the law of the land of the said kingdom of Ireland, the said judgment ought to have been given for the said John against the said Richard;—therefore in that there is manifest error. Wherefore the said John prays, that the judgment aforesaid, and the affirmance aforesaid, for the errors aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing; and that the said John may be restored to all things which he hath lost by occasion of the said judgment, &c.

For a rejoinder hereto, and all further proceedings, see Error in the King's Bench.

C H A P. XXIV.

Supplemental Cases determined in the courts of King's Bench and Common Pleas.

A Batement. Error abates by the death of Salk. 219. the plaintiff in error, but not of the defendant, either before or after errors assigned.

Judgment in the *Common Pleas* against Ibid. four in trespass, who brought error in the *King's Bench*: after the record was certified one of the plaintiffs in error died; the writ abated, and the plaintiff in the original action had execution on suggesting the death of the party upon record, without suing out *scire facias*.

Where error abates by the act of the plaintiff in error, if he sues out a new writ of error it is no *superfedeas*, the defendant may have execution. Otherwise, when the error abates by the act of God or without fault of the party. 1 Vent. 353. Godb. 66, 68. Latch 57, 58.

If error abates by the death of the parties, or chief justice, the second writ shall be a *superfedeas*. 3 Keb. 466.

But in these cases, on error abating by the death of the chief justice, leave was given to take out execution. The writ of 1 Barnes's Notes 139 140.

Pract. Reg. error not being returned, and signed by the
in C. P. 195. chief justice, becomes ineffectual by his
196. death.

The writ of error being become ineffectual by the death of the chief justice, the return not being signed by him, and consequently the record not removed; yet plaintiff cannot take out execution without motion and leave of the court.

Where a writ of error determines in the *Exchequer Chamber* by *abatement*, or discontinuance, judgment is not again in the *King's Bench* without a *remittitur*.

2 Mod. 285. In a writ of error, if one be dead, he must be named.

Yelv. 208. If the defendant in error dies, the plain-
1 Vent. 34. tiff in error must issue a *scire facias* against
Siderf. 419. the executors to hear errors; and then, and not before, may proceed to reverse the judgment.

Barnes's But if a writ of error is brought merely
Notes 347. for delay, the plaintiff will not be in such
20 G. II. a hurry: for which reason the executor of the
Wright v. defendant in error, in order to compel
Treweeke. plaintiff to assign errors, must sue out a *scire facias quare executionem non*, which forces him. If errors were assigned before the defendant's death, the executor must proceed as if defendant was living, till judgment is affirmed, and then revive by *scire facias*; but cannot take out execution pending the writ of error.

Yates 206. error not being removed, and signed by the
in C. P. 14. chief justice, becomes in effect a death
196. writ.

The writ of error being become void by the death of the chief justice, the error not being signed by him, and consequently the record not removed; yet plaintiff cannot take out execution without notice and leave of the court.

Where a writ of error determines in the Exchequer Chamber by adjournment, or otherwise, judgment is not again in the King's Bench without a remittitur.

2 Mod. 235. In a writ of error, if one be dead, he must be named.

Yates 208. If the defendant in error dies, the plaintiff in error must issue a *fiat facias* against the executor to hear errors; and then, and not before, may proceed to reverse the judgment.

Baron's Books 247. But if a writ of error is brought after a death in a hurry; for which reason the executor of the defendant in error, in order to enable plaintiff to assign errors, must sue out a *fiat facias quare executionem sen.* which lies against him. If errors were assigned before the defendant's death, the executor must proceed as if defendant was living, till judgment is affirmed, and then revive by *fiat facias*, but cannot take out execution pending the writ of error.

In error, the nonsuit of one party shall not hurt the other, because they are not to recover, but to discharge themselves of a personalty. 6 Rep. Ruddock's case.

If a judgment be reversed for error, the plaintiff may commence a new action for the same matter; and he shall have the advantage of the commencement of his first action, in case the statute of limitations should be pleaded to the *second*, provided such second action is brought within a year and a day. Idem.

Amendment of the return of the sheriff after a writ of error brought 3 *Levins* 361.— And various other cases of amendments and denials of amendments, in *March Rep.* 72. *Hob.* 317. *Cr. Ja.* 119, 131, 265, 429, 444, 628. 8 *R. Blackamore's case.* *Cr. Car.* 38. *Cr. Eliz.* 172, 435, 462. 1 *Leon.* 276. 1 *Brownl.* 66, 75. 8 *Rep.* 162. 2 *Mod. Rep.* 316. 3 *Keb.* 466. *Str.* 837. and 892.

Want of pledges at common law is error, and not aided by the statute 18 *Eliz.* Cr. Jac. 414. Cr. Car. 91, 92, 594. Raym. 51. 1 Sanders 98.

Not praying of damages is no error, being but matter of form. Tr. 1651. Barcock and Thomson. 4 *Mod. Rep.* 314.

Error brought by bail on a judgment by *scire facias*. They cannot assign for error that there is no *ca. fa.* returned against the principal, for they might have pleaded it to the *sci. fa.* and here the return of two *nibils* amounts to a summoms, and is all one with

with it; and this is a matter of record and not matter of fact.

Cr. Eliz. 669. The error assigned was, that the defendant appeared by *J. S. Attornatum suum*, when there was not any such *J. S. in rerum naturâ*. The defendant pleaded in *nullo est erratum*, and so confesseth it. Yet the court held it to be no error, for it is against the record: but the plaintiff in error might have assigned for error, that *J. S.* had no *warrant of attorney*.

Hob. 90. Where the roll is faulty the writ of error shall not help it.

Cr. Eliz. 333.
Hale super,
Lit. 3.
Poss. 25.
El. 242. Error of a judgment in debt, for that in the writ he was named *son and heir apparent*; and in the declaration, *son and heir*, generally; and for this variance the judgment was reversed.

The same doctrine is also held *vice versa*, that is, if a man is styled *son and heir* generally in one place, and *son and heir apparent* in another, the judgment shall be reversed.

6 Ed. IV. 19.
7 Hen. IV. 7.
Theol. 50.
Show. 392.
Dyer 88. And again, if the title of *knight* is given to a person who is a *baronet*, this is also error, and the judgment shall be reversed; for that it doth not appear that they are the same persons: and in other similar cases judgments may be reversed.

Pal. 225. If a feme covert appear as vouchee, being under age, it is error.

...the law, execution to reverse the same, and if it is found against the plaintiff, and if it is found that they shall have execution of his goods...

...it is now be ordered, and no mention of the law, and if it is found against the plaintiff, and if it is found that they shall have execution of his goods...

An action of debt on a judgment in R. R. V. ... brought after a writ of error allowed.

The defendant pleaded the writ of error ... and the record certified into the ...

The plaintiff demurred, the demurrer was ... and the defendant moved to ... An action of debt will lie in this ... by the writ of error the trans- ... and not the record shall be ... the judgment should be ... in the ... the record ... in R. R. where the record of ... judgment remains.

The plaintiff may proceed to judgment in R. R. ... of debt on the former judgment, ... take out execution till error be ...

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with us, and this is a matter of record
and not matter of fact.

C. 215. 119. The error assigned was, that the defendant
appeared by *J. S. Alvarius Jure*, when
there was not any such *J. S.* in error return.
The defendant pleaded in *able of error*,
and so confessed it. Yet the court held it to
be no error, for it is against the records; but
the plaintiff in error might have assigned for
error, that *J. S.* had no warrant of attorney.

115. 9. Where the roll is faulty the writ of error
shall not help it.

C. 115. 119. Error of a judgment in debt, for that
in the writ he was named *for and last ap-
parent*, and in the declaration, *for and
last*, generally; and for this variance the
judgment was reversed.

The same doctrine is also held *vice versa*,
that is, if a man is styled *for and last* gene-
rally in one place, and *for and last apparent*
in another, the judgment shall be reversed.

220. 11. 19. And again, if the title of *twight* is given
to a person who is a *barren*, this is also
error, and the judgment shall be reversed;
for that it doth not appear that they are the
same persons; and in other similar cases
judgments may be reversed.

221. 119. If a *female* covert appear as voucher, being
under age, it is error.

Error lies for executors to reverse out-lawry in felony against the testator; and if reversed they shall have execution of his goods. 1 Leon. 125.
325.

If a man be outlawed, and no mention made what county he was of, this may be reversed without a writ of error; but if outlawed without his addition, where addition ought to be given, he must have a writ of error; although the statute saith such outlawry shall be void. 8 H. 6. 37.
11 H. 6. 15.
b.

An action of debt on a judgment in *B. R.* was brought after a writ of error allowed. Vent. 34.
Dyer 32. v.
18.

The defendant pleaded the writ of error depending, and the record certified into the *Exchequer Chamber*. 4 Mod. 247.
3 Bur. 1549.

The plaintiff demurred, the demurrer was held good, and the defendant ruled to answer over. An action of debt will lie in this case, because by the writ of error the transcript only, and not the record itself, is removed: for if the judgment should be affirmed in the *Exchequer Chamber*, the execution is awarded in *B. R.* where the record of the original judgment remains.

The plaintiff may proceed to judgment in this action of debt on the former judgment, but cannot take out execution till error determined. Prac. Reg. in
c. 55. 182.
S. P.

1 Barnes's
notes 134,
140, 143.
Rep. & Caf.
of Pract. in
C. P. 130,
159. S. C.
Pract. Reg.
in C. B. 183,
186. S. P.

Pending a writ of error, an action was brought on the judgment; and after judgment therein, execution was levied: *per cur'*; defendant might have moved to stay proceedings in the action on the judgment, pending the writ of error, which is always granted; but having made no application the plaintiff is regular.—After judgment in an action of debt on a former judgment, and *ca. fa.* delivered to the sheriff, defendant moved to stay execution pending a writ of error brought to reverse the former judgment. Shew cause. *Per cur'*, the motion comes too late, it ought to be before judgment in the latter action.

1 Barnes's
notes 314.

A writ of error being brought before the exigent executed, stays the proceedings to outlawry.

Ibid. 141.
Pract. Reg.
in C. P. 149.

Joint action against several defendants, the plaintiff obtained a verdict against four of the defendants, and had 20*l.* damages; he recovered judgment by default against another defendant, and 5*s.* damages; the four defendants brought a writ of error in the name of the last defendant, who was not bound to put in bail thereon, because the judgment against him was by default. Leave was given to take out execution against the other four defendants notwithstanding the writ of error.

Rep. & Caf.
of Pract. in
C. P. 35.
E. 13 G. 1.
Jennings v.
West.

The defendant suffered judgment by default, and staid till after execution was sent into *Dorsetshire*, and then got a writ of error allowed, and served the agent with the allowance.

OF WRITS OF ERROR

And although it was impossible to stay the execution in *Deft's* case, the writ having been sent down some time before, yet the court set aside the execution, and entered mitigation, without costs: for the allowance of a writ of error is a *superfida* from the time of the allowance, though the writ executes the writ before notice was given, and yet neither the plaintiff, or his attorney, agent, or sheriff, were blameable for any misconduct.

A writ of error is a *superfida* from the time of allowance, but no contempt till notice. In note 173, the last case, it is said a writ of error is a *superfida* from the sealing, though no contempt is incurred till after notice given of the allowance.

But that doctrine is contradicted: for the court after consideration, determined, that a writ of error is not a *superfida* from the sealing, but from the delivery to the clerk of the error, according to the rule, *M. 23 Car. 2.* In this case judgment was signed 28 Oct. 1707, between five and six in the evening; the sheriff seized the defendant's goods in a *first facias*: which the defendant moved to set aside, a writ of error having passed the great seal in the morning of the 28th Oct. but it was not allowed before the *first facias* was executed. The question was, from what time the writ of error is to be deemed a *superfida*. The court determined as above.

ance. And although it was impossible to stay the execution in *Dorsetshire*, the writ having been sent down some time before; yet the court set aside the execution, and ordered restitution, without costs: for the allowance of a writ of error is a *superfedeas* from the time of the allowance, though the sheriff executes the writ before notice was given; and yet neither the plaintiff, or his attorney, agent, or sheriff, were blameable for any misconduct.

Writ of error is a *superfedeas* from the allowance, but no contempt till notice. In the last case, it is said a writ of error is a *superfedeas* from the sealing, though no contempt is incurred till after notice given of the allowance.

1 Barnes's
notes 275,
314.

But that doctrine is contradicted: for the court, after consideration, determined, that a writ of error is not a *superfedeas* from the sealing, but from the delivery to the clerk of the errors, according to the rule, *M. 28 Car. 2.*—In this case judgment was signed 28 *Oct.* & 29 *Oct.* between five and six in the evening, the sheriff seized the defendant's goods by a *feri facias*: which the defendant moved to set aside, a writ of error having passed the great seal in the morning of the 29th *Oct.* but it was not allowed before the *feri facias* was executed. The question was, from what time the writ of error is to be deemed a *superfedeas*. The court determined as above.

2 Barnes's
notes 164,
170.
Morton v.
Stevens,
M. 15 Geo. 2.

M. S.
See 5 Mod.
67.

If the plaintiff in error surrenders himself, or is surrendered by the bail in the original action, to prison, where he lies for upwards of two terms without being charged in execution; he is *not* supersedable; but if he wants to obtain a *superseas*, he must first of all take the necessary steps for discontinuing the writ of error; for, while that continues in force, no farther steps can be taken in the first action by either party.

J. BURLAND.

Rep. & Caf.
of Pract. in
C. P. 54.

Judgment by *cognovit actionem*, signed after the return of the writ of error; execution set aside, and restitution to be made; the plaintiff's attorney having promised to sign judgment on a certain day, which was before the return of the writ of error, but did not. The plaintiff's attorney ordered to sue out a new writ of error at his own costs.

Ibid. 46.

Judgment in *ejectment*, and error brought, the plaintiff in ejectment may bring an action for the mesne profits, and proceed to judgment, but not to execution till error determined.

Latch. 212.

In *ejectment* a writ of error lies before the execution of a writ of inquiry of damages: because in this case the judgment already is perfect to recover the *term*.

1 Barnes's
notes 133.

If final judgment be not signed till a subsequent term after error allowed, execution regular.

Error

...reversible...of term; and...Baron's...
...of term; execution can...
...be taken out.

...to let aside an execution...
...the writ of error...
...the writ of error was returned...
...the final judgment was signed; and...
...the court held, that it cannot be...
...the record of this judgment; and denied...
...the motion.

If the writ of error had been reversible...
...the first return of the term, in which...
...was signed, it would have removed...
...judgment having relation...
...to the day in bank.

...a motion was made to let aside an...
...writ of error allowed...
...notice given to plaintiff's attorney...
...appeared as intervenor...
...writ of error...
...in Michaelmas term; and a writ...
...was then allowed, and notice given...
...the final judgment was not signed till...
...beginning of Hilary term. Chief Justice...
...the judgment to be regular; the intervenor's...
...being removed by the writ of...
...the final judgment being signed...
...a subsequent term, was not removed...
...refused to make any rule.

After writ of error allowed and served, the...
...in the judgment executed a...
...for want of bail being put in within...
...days; the defendant moved to let it...
...after, R. v. G. 1.

Mid.
145 Mid.

If the plaintiff in error form, by default, or is surcharged by the defendant in the original action, to prison, where he has the appearance of two terms without being charged in execution; he is not supercedable; but if he wishes to obtain a *supercedas*, he must in the first instance take the necessary steps for obtaining the writ of error; for, while that writ is in force, no farther steps can be taken in the original action by either party.

J. BURRILL

Rev. a Cal.
of Peace, in
O.P. 144.

Judgment by *agnoscit* *affirmation*, signed after the return of the writ of error; execution is made, and restitution is to be made; the plaintiff's attorney having promised to sign judgment on a certain day, which was before the return of the writ of error, but did not. The plaintiff's attorney ordered to sue out a writ of error at his own costs.

Mid. 43.

Judgment in *quidam*, and error brought by the plaintiff in judgment may bring an action for the mesne profits, and proceed to judgment, but not to execution till error is determined.

Law. 111.

In *quidam* a writ of error lies before the execution of a writ of inquiry of damages because in this case the judgment already perfect to recover the term.

1 Stat. 14
1801 133

If final judgment be not signed till a subsequent term after error allowed, execution regular.

1 Stat. 14

P
fa
fo

Error returnable effoin-day of term, and judgment signed of same term, execution cannot be taken out. 1 Barnes's notes 134.

Motion to set aside an execution taken out after the expiration of the writ of error; it appeared the writ of error was returned before the final judgment was signed; and therefore the court held, that it cannot remove the record of this judgment; and denied the motion. Rep. & Cal. of Pract. in C. P. 88.

If the writ of error had been returnable after the first return of the term, in which judgment was signed, it would have removed the record; such judgment having relation to the day in bank. Ibid.

Says, a motion was made to set aside an execution issued after a writ of error allowed, and notice thereof given to plaintiff's attorney: it appeared that an interlocutory judgment was signed, and a writ of inquiry executed, in *Michaelmas* term; and a writ of error was then allowed, and notice given; but the final judgment was not signed till the beginning of *Hilary* term. *Cur'*: held the execution to be regular; the interlocutory judgment *not being removed* by the writ of error, and the final judgment being signed of a subsequent term, was not removed. *Ergo* refused to make any rule. 2 Barnes's notes 133. S. C. 1 Lil. 552.

After writ of error allowed and served, the plaintiff in the judgment executed a *Fieri facias* for want of bail being put in within four days; the defendant moved to set it aside, 2 Barnes's notes 175. Incledon v. Clarke, in error. E. 25 Geo. 2.

2 Rol. Abr.
491.

aside, suggesting that the plaintiff could not regularly take out execution until after certificate from the clerk of the errors. *Cur'*: held such certificates not essentially necessary before taking out execution, though frequently taken out of caution. The stat. 16 & 17 Car. II. is positive as to bail within four days. Bail ought to have been put in before the motion. *Cur'*: discharged the rule to shew cause. A question arose, whether, after bail perfected, the goods can be restored? held that if defendant's person be taken by a *ca. sa.* and bail in error afterwards perfected, the person shall be discharged; but in case of a *feri facias*, the proceedings as far as the sheriff hath gone must stand: but see 2 Roll. Abr. 491.

1 Lil. 526.

Where a writ of error is brought to reverse a judgment of an inferior court, though the record is not certified as it ought, yet execution cannot be sued; but on certificate of the neglect, &c. a writ of *executione judicii* may be issued.

Ibid. 518.

And if a writ of error to reverse a judgment be discontinued for want of prosecution; execution cannot be had upon the judgment until the discontinuance is certified from the court where discontinued.

Ibid.

The want of a bill in *B. R.* is error upon a judgment by confession, or default; but not after a verdict; because the bill is the original process there.

The

Thereby, notwithstanding the plaintiff had in *20 s.* and his damage at only *40 l.* assessed *20 l.* for damages, and *20 s.* for costs.

The plaintiff afterwards entered a *repleading* for a *100 l.* parcel of the damages, and moved judgment for *40 l.* the amount of the damages laid; and also *100 l.* for costs, *9 l.* for costs *de interinvento* having been added by the court. Judgment being given by the court at *King's Bench* for *40 l.* a writ of error was brought in the *Exchequer Chamber*, and the question was whether this judgment was erroneous, by reason that the sum for which it was given amounted to more than the damages laid in the declaration. It was with great consideration held by all the judges of the *Common Bench*, and barons of the *Exchequer*, that the judgment of the court at *King's Bench* should be affirmed.

The writ of error can be nonprolled until the *20th* day of the month of June has been taken out and *1720* agreed.

Judgment against two in *C. B.* both *de C. B.* *20 s.* must join in the writ of error; if one *Bar. Rep.* *20 s.* he must be licensed and *1721* *20 s.* otherwise every defendant might sue a writ of error, and thereby delay the *20 s.* in his execution, although his judgment should be affirmed once or oftener.

Lord William Howard having recovered *Hob. 2 l.* *20 s.* in a *repleading* against *Salkeld*: the writ before the execution was levied brought

2 Tot. 451.
491.

aside, suggesting, that the plaintiff should not regularly take out execution until after certificate from the clerk of the court. Car. held, such certificates not essentially necessary before taking out execution, though it might be taken out of caution. The stat. in 2 Car. II. is positive as to bail within eight days. Bail ought to have been posted upon the motion. Car. discharged the writ as *non est*. A question arose, whether, after bail perfected, the goods can be returned; held that if defendant's person be taken in a *ca. sa.* and bail in error afterwards perfected, the person shall be discharged; but in case of a *seri facias*, the proceedings as far as the sheriff hath gone must stand: but for a *hab. cor.* 491.

1 Lil. 548.

Where a writ of error is brought to reverse a judgment of an inferior court, though the record is not certified as it ought, yet execution cannot be sued; but on certificate of neglect, &c. a writ of *certiorari* may be issued.

2 Mod. 518.

And if a writ of error to reverse a judgment be discontinued for want of prosecution, execution cannot be had upon the judgment until the discontinuance is recalled from the court where discontinued.

fold.

The want of a bill in *B. R.* is error upon a judgment by confession, or default; and not after a verdict; because the bill is the original process there.

The

The jury, notwithstanding the plaintiff had 10 Rep. 115. laid his damage at only 40 l. assessed 49 l. *Pliford's case.* for damages, and 20 s. for costs.

The plaintiff afterwards entered a *remititur* as to 9*l.* parcel of the damages, and prayed judgment for 40*l.* the amount of the damages laid; and also 10*l.* for costs; 9*l.* for costs *de incremento* having been added by the court. Judgment being given by the court of *King's Bench* for 50*l.* a writ of error was brought in the *Exchequer Chamber*; and the question was whether this judgment was erroneous, by reason that the sum for which it was given amounted to more than the damages laid in the declaration. It was upon great consideration held by all the justices of the *Common Bench*, and barons of the *Exchequer*, that the judgment of the court of *King's Bench* should be affirmed.

No writ of error can be nonprossed until Bar. Rep. a rule to assign errors has been taken out and 1772, expired.

Judgment against two in *C. B.* both de- Carth. 7.
fendants must join in the writ of error; if one Bur. Rep.
refuses, he must be summoned and severed: 1791.
for otherwise every defendant might sue a
separate writ of error, and thereby delay the
plaintiff in his execution, although his judg-
ment should be affirmed once or oftener.

Lord *William Howard* having recovered judgment in a *cessavit* against *Salkeld*: the tenant before the execution was levied brought

The Law and Practice

a writ of *deceit*; and because that would not stop execution, he brought also a writ of error: and although both writs tended to avoid the judgment, yet because they were grounded upon several reasons and respects, they were both allowed.

The statute of *Westminster* 1, 29. 3 Ed. 1. Enacts, "That if any person do act or consent to any thing in deceit of the court, or party, and thereof be attainted, he shall suffer a year and a day's imprisonment at the least; and if a pleader he shall be expelled the court; and if they deserve greater punishment it shall be at the king's pleasure."

CHAP. XXV.

The doctrine of costs in error.

THE first statute which gives costs to the plaintiff, to the defendant in a real action, was the statute of Gloucester, 6 Edw. I. c. 1. as did the statute of Marlbridge 32 Hen. III. c. 6. to the defendant in one particular case relative to wardship; though in reality costs were always considered and included in the parties of damages, in such actions where damages are given; and even now costs for the plaintiff are always entered on the roll instead of damages by the court. But because those damages were frequently insufficient to the plaintiff's expences, the statute of Gloucester orders costs to be also added; and further directs that the same rule shall be taken in all cases where the party is to recover damages. And therefore in such cases where no damages were then recoverable, (as in *quare impedit*, in which damages were not given till the statute of Westminster 2. 12 Edw. I.) no costs are now allowed; (10 Rep. 116.) unless they have been expressly given by some subsequent statute.

The statute 3 Hen. VII. c. 10. was the first which allowed any costs on a writ of error, and it has been doubted whether this statute extends to writs of error in the Exchequer Chamber; because the 27 Edw. which gives costs

The Law and Practice

a writ of *scire facias*; and because that would not stop execution, he brought also a writ of *error*; and although both writs tended to avoid the judgment, yet because they were grounded upon several reasons and respects, they were both allowed.

The Statute of *Westminster* 1, c. 3. *Enacts*, "That if any person do a[n]y thing to the loss of any thing in deceit of the clergy, or party, and thereof be convicted, he shall suffer a year and a day's imprisonment at the least; and if a pleader be found guilty, he shall be punished as he deserves; and if they deserve no punishment, it shall be at the king's pleasure."

CHAP.

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C H A P. XXV.

The doctrine of costs in error.

THE first statute which gives costs, *eo nomine*, to the demandant in a real action, was the statute of *Gloucester*, 6 *Edw. I. c. 1.* as did the statute of *Marlbridge* 52 *Hen. III. c. 6.* to the defendant in one particular case relative to wardship; though in reality costs were always considered and included in the *quantum* of damages, in such actions where damages are given; and even now costs for the plaintiff are always entered on the roll as increase of damages by the court. But because those damages were frequently inadequate to the plaintiff's expences, the statute of *Gloucester* orders costs to be also added; and further directs that the same rule shall hold place in all cases where the party is to recover damages. And therefore in such actions where no damages were then recoverable, (as in *quare impedit*, in which damages were not given till the statute of *Westminster* 2. 13 *Edw. I.*) no costs are now allowed; (10 *Rep.* 116.) unless they have been expressly given by some subsequent statute.

The statute 3 *Hen. VII. c. 10.* was the first which allowed any costs on a writ of error, and it has been doubted whether this statute extends to writs of error in the *Exchequer Chamber*; because the 27 *Eliz.* which gives writs

writs of error there; (recited in chapter the second), says nothing about *costs*. But no costs were allowed the defendant in any shape till the statutes. 23 *Hen. VIII. c. 15.* 4 *Jac. I. c. 3.* 8 & 9 *W. III. c. 11.* 4 & 5 *Ann. c. 16.* which very equitably gave the defendant, if he prevailed, the same costs as the plaintiff would have had in case he had recovered.

By 8 & 9 *W. III. c. 11.* "If after judgment for the *defendant* in any action, the plaintiff or demandant shall sue any writ of error to annul the same, and such judgment shall be afterwards affirmed, or the writ of error be discontinued, or the plaintiff shall be nonsuited therein, the defendant or tenant shall have judgment to recover costs."

Str. 617.
Wyvil v.
Stapleton.

Judgment was given for the defendant in the original action; a writ of error was brought thereon by the plaintiff; the judgment being reversed, the question was, whether the plaintiff should have costs in error as well as costs in the action. It was held he should only have costs in the original action, and none in error. And *per Cur.* The 3 *Hen. VII.* and 8 & 9 *W. III.* do only extend to the case of an *affirmance*: and it is very reasonable they should not extend to the case of a *reversal*: for it would be hard that any person should pay the costs occasioned by an error in the judgment of the court below. This court can only now give such judgment as the court below ought to have given.

to

the plaintiff's recovery is not limited to the actual loss sustained by him, but extends to the loss of profits which he has been obliged to forgo as a result of the injury.

It is to be noted that the doctrine of the "loss of profits" is not confined to cases where the plaintiff has suffered a physical injury to his person or property, but extends to cases where the injury is to his business or reputation.

It is also to be noted that the doctrine of the "loss of profits" is not confined to cases where the plaintiff has suffered a physical injury to his person or property, but extends to cases where the injury is to his business or reputation.

It is also to be noted that the doctrine of the "loss of profits" is not confined to cases where the plaintiff has suffered a physical injury to his person or property, but extends to cases where the injury is to his business or reputation.

The same doctrine is given in two other cases, viz. *Wainwright v. Macary* and *Wainwright v. Macary*.

But

to wit, judgment for the plaintiff in the original action. It follows therefore, that the plaintiff in error can never have the costs of suit upon a writ of error.

In one case the doctrine was, that in error Dyer 77.
on a judgment in *quare impedit*, upon the Case of the
judgment being affirmed, the defendant in bishop of
error should have *costs*, as well as damages, Salisbury.
although no costs were recoverable in the original action.

It is laid down in a second, that costs and Cro. Eliz.
damages being given generally by 3 *H. VII.* 617.
for the delay of the execution, if error is Graves and
brought on a judgment in *formedon*, and Short.
the judgment is affirmed, the defendant is intitled to costs, notwithstanding no costs or damages were in the original action recoverable.

Again it is said, that the defendant in Ibid. 649.
error, upon a judgment in a suit of *quod permittat*, shall have costs in case of affirmance, notwithstanding no costs or damages were recoverable in the original action; for that costs are to be paid in every case in which a writ of error is brought before execution, and the judgment is affirmed.

The same doctrine is given in two other Cro. Car.
cases wherein writs of error were brought 151. 175.
upon judgments in *quare impedit*, and in the Lord Pem-
first of them the bishop of *Salisbury's* case is broke v. Bos-
expressly recognized. tock.

But

But however, the contrary to what is here laid down has been held in divers subsequent cases.

Ibid. 425.
Smith v.
Smith.

Error in the *King's Bench* upon a judgment of the *Common Pleas* in *formedon*, and the judgment being affirmed, the question was, whether the defendant in error should have costs? it was held he should not; *per Cur.* As neither costs or damages were recoverable in the original suit, the delay of execution occasioned by this writ of error was only as to the land, and consequently the defendant is not intitled to costs under 3 H. VII. c. 10.

1 Lev. 146.

In a writ of error the judgment was affirmed; but it was holden upon the authority of *Smith and Smith, Cro. Car. 425.* that the defendant in error should not have costs; because neither costs or damages were, by the original action, recoverable.

1 Vent. 166.

A writ of error was brought by an *administrator*, before execution, upon a judgment in *ejectment* against the *intestate*, and the judgment was affirmed. It was held that he should not pay costs.

4 Mod. 245.
Carth. 281.
S.C.

Another writ of error was brought by an *administrator*, upon a judgment against himself as *administrator*, and the judgment affirmed. It was held he should not pay costs by reason he was not liable to any in the original action. v. chap. 2.

OF COSTS IN SUITS

179

It is to be observed, that the costs in suits are not to be paid by the party who is in the wrong, but by the party who is in the right, unless he has been negligent in some particular.

And in a very ancient case in which an action was brought by a man who had been wronged by another, the court held that the costs should be paid by the party who was in the right, and not by the party who was in the wrong.

But in some particular cases the costs are to be paid by the party who is in the wrong, and not by the party who is in the right.

Thus in the King's Bench in a judgment in the case of *Chambers v. Phipps*, in which being a question as to whether, as the defendant in error, could not have recovered in the original action, he was entitled to costs in error;—when it was determined that he was entitled to costs by the court in the King's Bench, the case was sent to the King's Bench for judgment.

And it was remarked by the court, that the rule of the defendant in error, in this case, is much stronger than in the case of *Chambers v. Phipps*, the party who is now plaintiff in error, would, under this statute, have been entitled to costs in case there had been judgment for him in the original action, but their judgment afterwards affirmed in the King's Bench.

The statute enacts, "That if any person or persons shall prosecute any writ of error or writ of certiorari, or writ of habeas corpus, or writ of mandamus, or writ of prohibition, or writ of scire facias, or writ of quo warrantum, or writ of return, or writ of venire facias, or writ of fieri facias, or writ of exco-

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for

But however, the error in this case had been corrected in the original action.

Case 100. Error in the jury's verdict upon a judgment in the Common Pleas in *Stratton v. Stratton*, the judgment being affirmed by the court. The court affirmed the judgment in error because the costs were paid by the plaintiff. It was held that the costs were paid by the plaintiff in the original action, the defendant was not liable for the costs of the original action, and consequently the costs were paid by the plaintiff in the original action.

Case 101. In a writ of error the judgment was affirmed, but it was before the court the costs of the original action. The court held that the defendant in error should not have the costs of the original action, but the plaintiff in error should have the costs of the original action.

Case 102. A writ of error was brought by an assignee of the plaintiff in error, upon a judgment in the Common Pleas, and the judgment was affirmed. It was held that the plaintiff in error should not pay costs.

Case 103. Another writ of error was brought by an assignee of the plaintiff in error, upon a judgment in the Common Pleas, and the judgment was affirmed. It was held that the plaintiff in error should not pay costs by reason he was not liable to any of the original action.

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No costs can be, after execution *executed*, because no delay; for 3 H. VII. only gives costs to a defendant in error, where execution has been delayed by the writ of error.

And in a very modern case in which an *Str. 1072.*
executor brought a writ of error upon a judgment against the testator, which was affirmed, it was held he was not liable to costs.

But in one posterior to the latest of the foregoing, the law of the old cases is recognized.

Error in the *King's Bench* on a judgment *Str. 1084.*
of the *Common Pleas*, in *usury*, which being affirmed, a question arose, whether, as the defendant in error, could not have recovered costs in the original action, he was intitled to any in error;—when it was determined he was intitled to costs by the express words of the 3 H. VII. this writ of error being in delay of execution.

And it was remarked by the court, that the right of the defendant in error, in this case, to costs, is much clearer since the 8 & 9 W. III. because the party who is now plaintiff in error, would, under this statute, have been intitled to costs in case there had been judgment for him in the original action, and such judgment afterwards affirmed in error.

This statute enacts, “ That if any person ^{13 Car. II. 1}
“ or persons shall prosecute any writ of error c. 2. par. 10.

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“ for

The Law and Practice

“for the reversal of any judgment given
 “after a verdict, in any court of record at
 “Westminster, or in the Counties palatine of
 “Chester, Lancaster, or Durham, or in any
 “court of great sessions in Wales, and the
 “said judgment shall be affirmed, then every
 “such person shall pay to the defendant or
 “defendants in the writ of error, his or their
 “double costs.”

4 Ann. c. 16. For preventing vexation by suing out defective writs of error, it is ordained, That upon the quashing of any writ of error for variance from the record or other defect, the defendant shall recover his costs as he should have done if the judgment had been affirmed.

March 863. A judgment, whereon a writ of error is brought, may be amended without costs, the 4 Ann. c. 16. par. 25. not giving costs on amending, as it doth on quashing.

Cro. Jac. 364. Cro. Eliz. 416, 892. Although the year and day are past, and no process of execution issued, yet, the writ of error having renewed the record, the plaintiff shall have execution without a *scire facias*.

C H A P. XXVI.

Containing the fees and charges payable.

Money from the Common Pleas to the King's Bench.

For the plaintiff's costs.

Before term, 1775.

	£	s	d
For writing precepts for writ of	0	2	0
For writ and copy for return	0	2	0
For return and for	0	2	0
For the allowance	0	2	0
For the allowance	0	2	0
For the allowance	0	2	0
For the allowance	0	2	0

After term.

	£	s	d
For the transcript	4	0	0
For the transcript	0	2	0
For the transcript	0	2	0
For the transcript	0	2	0
For the transcript	0	2	0
For the transcript	0	2	0
For the transcript	0	2	0

After term.

	£	s	d
For the transcript	0	2	0
For the transcript	0	2	0
For the transcript	0	2	0
For the transcript	0	2	0
For the transcript	0	2	0
For the transcript	0	2	0
For the transcript	0	2	0

K 2

Amend

C H A P. XXVI.

Containing the fees and disbursements.

In error from the Common Pleas to the King's Bench.

For the plaintiff in error.

Easter term, 1779.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
D rawing precipe for writ of error and copy for curfitor	0	2	0
Writ of error and fee	1	3	4
Paid for allowance	2	2	6
Attendance	0	3	4
Copy and service of the allowance	0	2	0

Trinity Term.

Paid for the transcript	4	0	0
Attending to examine it	0	3	4
Paid for delivering out same	0	2	0
Copy thereof 4 <i>d.</i> per sheet			
Term fee in error.	0	6	8
Letters	0	2	0

Michaelmas term.

Searching if rule on <i>sci. fa.</i> given	0	3	4
Searching with <i>custos brevium</i> if any original writ filed and paid	0	3	9
Fee to Mr. Baldwin to advise on the transcript	1	1	0
	K 2	Attend-	

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Attending him	0	3	4
Searching with the curfitor if any original writ sued out	0	3	4
Drawing assignment of errors fo. 6.	0	6	0
Fee to counsel to sign same	0	10	6
Attending him	0	3	4
Copy on stamps delivered	0	2	3
Rule to rejoin	0	2	0
Copy and service	0	2	0
Searching if rule to return <i>certiorari</i> given	0	3	4
Drawing <i>certiorari</i>	0	3	0
Ingrossing, signing, and sealing	0	5	6
Stamps and parchment	0	10	8
Fee thereon	0	3	4
Paid <i>custos brevium</i> for return	3	0	0
To his clerk	0	2	6
Attendance	0	3	4
Filing the same and notice	0	2	8
Copy joinder in error fo. 30.	0	10	0
Drawing verification of error, fo. 3.	0	3	0
Fee to counsel to peruse and sign	0	10	6
Attendance	0	3	4
Copy on stamps delivered	0	0	9
Paid for copy of defendants rejoinder	0	5	0
Completing the paper book	0	3	4
Entry on roll, fo. 60	1	0	0
Paid master *	0	18	0
Two copies for judges	2	0	0
To their clerks	0	4	0
Attending to deliver books	0	3	4
Copy paper-book for counsel	1	0	0
Fee to him	1	1	0

* Not done by the plaintiff in error, except it is
in his power to obtain a reversal of the judgment.

Attend-

...and ...him ...
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Attending him	0
Searching with the clerk for any original writ laid out	0
Drawing affidavit of errors for the fee to counsel to sign same	0
Attending him	0
Copy of stamps delivered	0
Writ to return	0
Copy and service	0
Searching a writ to return, rather than given	0
Drawing a return	0
Impounding, showing, and leasing	0
Stamps and parchment	0
For return	0
Paid under return for return	0
To his clerk	0
Attendance	0
Fixing the time and notice	0
Cops provided as ever for go	0
Drawing a return of error for	0
Fee to counsel to sign and go	0
Attendance	0
Copy of stamps delivered	0
Paid for copy of a return of error	0
Compiling the paper book	0
Books of rule for go	0
Paid under	0
Two copies for judge	0
To their clerk	0
Attending to deliver books	0
Copy paper book for counsel	0
Fee to him	0

* Not done by the printer in error, except in the case of a return of error of the judge.

Alfred

	l.	s.	d.
Attending to instruct him	0	3	4
Attending court on the argument (each day in the paper)	0	6	8
Term fee	0	6	8
Letters	0	2	0

If the Writ of error is bailable, add the following fees, directly after the allowance.

Attending clerk of errors with the bail and on same being acknow- ledged	0	3	4
Paid fees thereon	1	4	0
Notice of bail put in, copy, and ser- vice	0	2	0
A rule being served for better bail notice of justification, copy, and service	0	2	0
Affidavit of service	0	5	7
Instructions for counsel to move to justify bail	0	2	6
Fee to serjeant Walker	0	10	6
Attending court when bail allowed	0	3	4
Paid court fees	0	15	0
Paid for rule	0	5	0
Copy and service	0	2	9

C H A P. XXVII.

*Costs for the defendant in error.**From the Common Pleas to the King's Bench.**Easter vacation, 1779.*

	<i>l.</i>	<i>s.</i>	<i>d.</i>
S earching if writ of error allowed,			
and when returnable	0	3	4
Drawing precipe for original fo. 20	1	0	0
Copy for curfitor (8 <i>d.</i> per fo. <i>allowed</i>)	0	13	4
Paid for original	0	13	0
Fee thereon	0	6	8
<i>Paid king's fine</i>			
Returning and filing	0	6	0
Attendance on the occasion	0	3	4
<i>Making inquiries after the bail</i>	0	6	0
<i>Entering exception thereto</i>	0	2	0
<i>Rule for better bail</i>	0	4	0
<i>Copy and service</i>	0	2	0
<i>Drawing and ingrossing affidavit to oppose justification, fo. 9. stamps and oath</i>	0	9	1
<i>Instructions for counsel</i>	0	2	6
<i>Fee to serjeant Grose</i>	0	10	6
<i>Copy notice of justification annexed</i>	0	1	0
<i>Attending court when bail allowed</i>	0	3	4

Trinity term.

Rule to transcribe
Copy and service

0 4
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Search

THE LAM and PUBLISHER

C. H. A. P. XXVII

Copy for the Sign. sent in 1773

From the Common Place in the King's

High Court, 1773

Standing if with of their delivered
and when returned

Deputy printer for original in 1773

Copy for copy 1773 per 100
1773

Printed for original

Per 1000

Per 1000

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Per 1000

Per 1000

Per 1000

	l.	s.	d.
Searching if plaintiff had transcribed	0	3	4
Paid clerk of errors examining transcript	0	2	6
Attendance	0	3	4
Paid Mr. Heberden for copy paper book fo. 27	0	9	0
Drawing <i>sci. fa. quare executionem non</i> fo. 6.	0	4	0
Ingrofing ditto stamps and parch-ment	0	4	4
Signing and sealing	0	2	3
Warrant thereon and messenger	0	3	4
Paid officer	0	5	0

If an alias scire facias be issued, the same fees are to be added as are charged on the first.

Term fee	0	6	8
Letters	0	2	0

Michaelmas term.

Rule on <i>sci. fa.</i>	0	2	6
Copy assignment of errors	0	2	6
Rule to return <i>certiorari</i>	0	2	6
Copy and service	0	2	6
Searching if <i>certiorari</i> returned	0	3	4
Paid for copy <i>certiorari</i> and return	1	1	0
Drawing joinder in error, fo. 30.	1	10	0
Fee to Mr. Baldwin to settle and sign	0	10	6
Attending him	0	3	4
Copy on stamps delivered	0	10	9
Fees to plaintiff's attorney therewith	0	2	6
Instructions for counsel to move for <i>consilium</i>	0	2	6

K 4

Fee

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Fee to him	0	10	6
Attending court	0	3	4
Paid for rule	0	4	0
Copy and service	0	2	0
Enttring proceedings on roll, fo. 60	1	0	0
Paid master	0	18	0
Completing the paper book	0	3	4
Making two copies for judges	2	0	0
To their clerks	0	4	0
Attendance	0	3	4
Copy paper book for counsel	1	0	0
Fee to Mr. Baldwin therewith	1	1	0
Attending him	0	3	4
Paid setting down errors for argument	0	1	0
Attendance	0	3	4
Bagbearer taking roll to <i>Westminster</i>	0	0	6
Paid marking ditto read	0	1	0
Attending court on the argument (each day in the paper)	0	6	8
Drawing bill of costs	0	4	0
Attend master taxing costs	0	3	4
Paid	0	2	6
Drawing and enttring affirmance	0	10	0
Paid clerk of treasury	0	3	4
Special <i>Fieri facias</i> , &c.	0	10	0
Term fee	0	6	8
Letters	0	2	0

CHAP. XXIII.

Of the King's Bench in the Exchequer Chamber.

From the King's Bench in the Exchequer Chamber.

Trinity Term, 1779.

Transferred to Bench of Judges
to hear and determine

Trinity Term, 1779.

Transferred to Bench of Judges

Transferred to Bench of Judges

Transferred to Bench of Judges

Transferred to Bench of Judges

Transferred to Bench of Judges

Transferred to Bench of Judges

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Transferred to Bench of Judges

Transferred to Bench of Judges

Charges and Duties

Fee to him	0 0 0
Attending court	0 0 0
For rule	0 0 0
Copies and service	0 0 0
Examining proceedings on roll, fo. 60	0 0 0
Paid master	0 0 0
Completing the paper book	0 0 0
Making two copies for judges	0 0 0
To their clerks	0 0 0
Attendance	0 0 0
Copy paper book for counsel	0 0 0
For to Mr. Bagshawe clerk with	0 0 0
Attending him	0 0 0
Paid taking down errors for argument	0 0 0
Attendance	0 0 0
Bagshawe taking roll to Mr. Bagshawe	0 0 0
Paid marking date roll	0 0 0
Attending court on the argument	0 0 0
(each day in the paper)	0 0 0
Drawing bill of costs	0 0 0
Attended master taxing costs	0 0 0
Paid	0 0 0
Drawing and entering affirmance	0 0 0
Paid clerk of treasury	0 0 0
Special <i>Expi</i> justice, &c.	0 0 0
Term fee	0 0 0
Letters	0 0 0

C H A P. XXVIII.

Costs for the defendant in error.

From the King's Bench to the Exchequer-Chamber.

Trinity term, 1779.

l. s. d.

A TTENDING to search if error brought and when returnable 0 3 4

Michaelmas term, 1779.

Rule to certify record 0 2 0

Copy and service 0 2 0

Searching several times if plaintiff had transcribed and to expedite the transcript 0 3 4

Paid taking transcript out of the office 0 2 6

Attending in the Treasury, Westminster to examine transcript 0 6 8

If in vacation, or after court time,

Paid clerk of errors examining transcript, and for the keys of the treasury 0 7 10

Searching if writ of error and transcript were delivered over 0 3 4

Paid clerk of errors in Exchequer Chamber for copy transcript and writ of error 2 0 0

Attend thereon 0 3 4

Fair copy fo. 60 1 0 0

Attend-

The Law and Practice

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Attending and examining same with record	0	6	8
Term fee in error	0	6	8
Letters and messengers	0	2	0

Hilary term, 1780.

Rule for plaintiff to alledge diminution,	0	2	4
Copy and service	0	2	0
Searching several times to see if diminution alledged	0	3	4
Term fee in error	0	6	8
Letters and messengers	0	2	0

Easter term.

Rule for plaintiff to assign errors	0	2	0
Copy and service	0	2	0
Term fee	0	6	8
Letters, &c.	0	2	0

Trinity term,

Searching if errors assigned	0	3	4
Copy assignment of errors.	0	2	0
Drawing plea in <i>nullo est erratum</i>	0	4	0
Copy filed and duty	0	5	0
Paid setting down cause	0	10	0
Making copy paper book, fo. 70	1	3	4

The following fees if a special argument.

Four copies of paper book for the barons	4	13	4
To their clerks	0	8	0

UNIT STATES OF AMERICA

1862

Amounting to duty on line	0	0	0
Cost of paper and for freight	0	0	0
For the use of	0	0	0
At the place of	0	0	0
Amounting to duty on the original note	0	0	0
For the use of	0	0	0
Value of goods and property	0	0	0
Amount of tax on	0	0	0
Amount of tax on goods, and on ex-	0	0	0
change of property	0	0	0
Paid for affixing the postage	0	0	0
Drawing the entry, receipt and of	0	0	0
freight	0	0	0
Amount on roll	0	0	0
Amount due to the Treasury for entry	0	0	0
and exchange duty	0	0	0
For the use of	0	0	0
For the use of	0	0	0
For the use of	0	0	0

UNITED STATES

According to the existing laws

of the State

the following are the

provisions

for the purpose of

the State

the following are the

provisions

for the purpose of

the State

the following are the

provisions

for the purpose of

the State

the following are the

provisions

for the purpose of

the following are the

provisions

for the purpose of

the following are the

provisions

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Attending to deliver same	0	6	8
Copy paper book for counsel	1	3	4
Fee to him	2	2	0
Attending him	0	3	4
Attending court on the argument each day	0	6	8
Bill of costs and copy	0	4	0
Notice of taxing	0	3	0
Attending taxing costs, and to examine remittitur	0	6	8
Paid for affirming the judgment	4	0	0
Drawing the entry thereof and of remittitur	0	6	0
Entering on roll	0	3	0
Attendance in the Treasury to enter and examine same	0	6	8
Paid clerk	0	3	6
Term fee	0	6	8
Letters	0	2	0

The Law and Practice

C H A P. XXIX.

*The plaintiff in error's costs.**In the Exchequer Chamber.**Trinity Term.*

	<i>l.</i>	<i>s.</i>	<i>d.</i>
D rawing precipe for writ of error and copy	0	2	0
Paid curfitor for same and fee	1	0	0
Paid clerk of errors for allowing it	2	0	0
Attending on the occasion	0	3	4
Copy and service	0	2	0

Michaelmas term.

Being served with rule to transcribe, paid for transcript	3	0	0
Paid taking same out of the office	0	2	6
Paid clerk of errors in <i>Exchequer</i> <i>Chamber</i> for copy, writ and transcript	2	0	0
Attending thereon	0	3	4
Fair copy, fo. 60	1	0	0
Attending to examine same with record	0	6	8
Fee to serjeant <i>Grose</i> to advise on the transcript	1	1	0
Attending him	0	3	4
Searching if any bill, bail, &c. filed	0	3	4
Term fee	0	6	8
Letters	0	2	0

Hilary

THE NEW YORK PUBLIC LIBRARY

ASTEN LENOX TILDEN FOUNDATION

1895

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Hilary term.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Rule to alledge diminution served; drawing and ingrossing writ of diminution, 8 <i>d.</i> per folio.			
Stamps and parchment, sealing, &c.	0	5	0
Paid returning it and fee	1	0	0
Paid alledging diminution *	0	8	0
Term fee	0	6	8
Letters	0	2	0

Easter term.

Paid for assignment of errors	0	8	0
Term fee	0	6	8
Letters	0	2	0

Trinity term.

Copy plea in <i>nullo est erratum</i>	0	2	0
Making copy paper book for coun- sel, fo. 70	1	3	4

If a special argument, or in case of bail being put in on the writ of error, proper fees for the same, as also for the remainder of these costs, are inserted in the three last Chapters.

* See Page 98.

C H A P XXX.

*The costs of the plaintiff in error.**In Parliament.**Trinity term.*

	<i>l.</i>	<i>s.</i>	<i>d.</i>
D rawing precipe for writ of error and copy	0	2	0
Paid for writ of error and fee	6	9	8
Paid for allowance	4	0	0
Attendance	0	6	8
Copy and service	0	2	0

Michaelmas term.

Paid for transcript	5	0	0
Attending to examine same	0	6	8
Paid for delivering same out of the office	0	2	6
Copy thereof 4 <i>d.</i> per folio			
Attending to examine with record	0	6	8
Paid clerk of errors	0	3	4
Fee to counsel to advise on transcript	1	1	0
Attending him	0	3	4
Term fee	0	6	8
Letters	0	2	0

Hilary term, 1780.

Drawing assignment of errors, fo. 9.	0	9	0
Fee to counsel to sign	0	10	6

At

of House of Commons

1842

	1	2	3
Standing list	0	2	4
Copies on stamps delivered	0	3	3
Print of Commission and list	1	0	0
Printing	1	0	0
Expenses for candles	2	5	0
Stationery and fire	0	12	0
Expenses for water	0	5	0
Expenses for house on motion for a			
Vote to bear costs	0	0	2
Expenses on paper book for			
Journal of the House			
Expenses for Mr. Harrison	1	2	0
Expenses for Mr. Lee	2	2	0
Expenses for Mr. ...	0	5	0
Expenses for ...	0	6	9
Expenses for the House of Peers each			
Expenses for ...	0	6	0
Expenses for ...	1	0	0
Expenses for ...	0	10	0
Expenses for ...	0	1	0
Expenses for ...	0	0	0
Expenses for ...	0	2	0

It is provided that if any printed matter is delivered to the House, it shall be charged for according to the length; and it shall be put to the vote of every member, or any other person, whether a member or not, if the same may be acquired from the foregoing chapters of the House and Distribution.

CHAP. XXI.

The cost of the plaintiff in error

In Parliament.

Plaintiff in error.

Drawing writ for writ of error and copy
 Paid for writ of error and fee
 Paid for show cause
 Attendance
 Copy and service

At Parliament 1781.

Paid for transcript
 Attending to examine time
 Paid for delivering time out of the
 other
 Copy thereof and per diem
 Attending to examine and return
 Paid clerk of court
 Fee to counsel to advise of transcript
 Copy
 Attending him
 Term fee
 Justice

Thirty terms, 1781.

During assignment of course, fee 3s. 6d.
 Fee to counsel to sign

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Attending him	0	3	4
Copy on stamps delivered	0	3	3
Writ of diminution and fee	1	0	0
Paid returning	1	0	0
Copy return for counsel	0	5	0
Certiorari and fee	0	15	0
Copy joinder in error	0	5	0
Attend the house on motion for a day to hear errors	0	6	8
Two copies of paper book for counsel 4 <i>d.</i> per folio			
Fee to Mr. <i>Hardinge</i>	2	2	0
The same to Mr. <i>Lee</i>	2	2	0
Their clerks	0	5	0
Attending them	0	6	8
Attending the House of Peers each day	0	6	8
Paid fees on reversal	1	0	0
Drawing and entring reversal of the judgment	0	10	0
Paid clerk of Treasury,	0	3	4
Term fee	0	6	8
Letters	0	2	0

If printed cases are delivered to the Lords, they must be charged for according to the length: and if bail be put in on the writ of error, or any other *extra* matter done; the proper fees for the same may be acquired from the foregoing chapters of Fees and Disbursements.

C H A P. The last.

Containing authentick precedents of special writs of execution and scire facias, after affirmance, non-pros, and reversal of judgments.

Affirmance by the King's Bench of a judgment of the Common Pleas.

(Fi. fa.)

GEORGE, the third, (Ec.) To the sheriff of M. greeting. We command you, that you cause to be made, and levied, of the goods, and chattels, in your bailiwick, of *John Gregory*, late of *Westminster*, in your county, yeoman, 28 l. 10 s. which *Ann Hook*, lately in our court, before Sir *William de Grey*, knight, and his bretheren, (iben) our justices of the bench at *Westminster*, recovered against the said *John*,

(Ca. fa.)

GEORGE (Ec.) To the sheriff of M. greeting. We command you, that you take *John Gregory*, late of *Westminster*, in your county, yeoman, if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us in eight days of *St. Hilary*, wheresoever we shall then be in *England*, to make satisfaction to *Ann Hook*, for 28 l. 10 s. which the said *Ann*, lately in our court, before Sir *William de Grey*, knight, and his companions, then our justices of the bench, at *Westminster*, recovered against the said *John*

for

LETTER TO THE EDITOR

Dear Sir,
I have the honor to acknowledge the receipt of your letter of the 10th inst. in relation to the matter of the
and in reply to inform you that the same has been forwarded to the proper authorities for their consideration.
I am, Sir, very respectfully,
Your obedient servant,
J. H. [Name]

Very truly,
Yours,
J. H. [Name]

The Last of the Mohicans

CHAPTER I

Containing an account of the death of
the last of the Mohicans, and the
the capture of the last of the Mohicans,
and the capture of the last of the Mohicans.

REMARKS BY THE KING'S HOUSE OF
THE COMMONS.

CHAPTER II

Containing an account of the death of
the last of the Mohicans, and the
the capture of the last of the Mohicans,
and the capture of the last of the Mohicans.

CHAPTER III

Containing an account of the death of
the last of the Mohicans, and the
the capture of the last of the Mohicans,
and the capture of the last of the Mohicans.

CHAPTER IV

Containing an account of the death of
the last of the Mohicans, and the
the capture of the last of the Mohicans,
and the capture of the last of the Mohicans.

CHAPTER V

Containing an account of the death of
the last of the Mohicans, and the
the capture of the last of the Mohicans,
and the capture of the last of the Mohicans.

CHAPTER VI

Containing an account of the death of
the last of the Mohicans, and the
the capture of the last of the Mohicans,
and the capture of the last of the Mohicans.

CHAPTER VII

Containing an account of the death of
the last of the Mohicans, and the
the capture of the last of the Mohicans,
and the capture of the last of the Mohicans.

for her damages, which she sustained, as well by reason of the said *John's* not having performed certain promises and undertakings made by him to the said *Ann*, as for her costs and charges, which she had been put unto, about her suit in that behalf; whereof the said *John* was convicted. As by the record, and proceedings thereof, which we lately caused to come into our court before us, for certain causes of error, and now there remaining, it appears to us of record: *And also fourteen pounds* adjudged to the said *Ann*, in our said court before us, according to the form of the statute in such case made and provided, for her damages, costs, and charges, which she hath sustained and expended, by occasion of the delay of the execution of the judgment aforesaid, by the prosecution of our said writ of error; *the said judgment being, in our said court before us, in all things affirmed*: whereof the said *John* is also convicted; as appears to us likewise of record.

And have you the said monies before us, in *eight days of St. Hilary*, wheresoever we shall then be in *England*, to render to the said *Ann*, for her damages, costs, and charges, aforesaid; and also this writ. Witness, &c.

And have you there this writ. Witness, *William* earl of *Mansfield*, at *Westminster*, the 28th day of *November*, in the 20th year of our reign.

Stormont and Way.

L

Until

The Law and Practice

Until the transcript comes into the *King's Bench*, the cause is not removed : (and so from thence into the *Exchequer* :) if therefore *non-profs* is signed for not *transcribing*, there must be nothing but a common execution issued from the court in which the judgment was obtained, just the same as if nowrit of error had been brought at all. (*See page 31.*)

Non profs, *after scire facias quare non executionem non.*

(*Fi. Fa.*)

(*Ca. Sa.*)

George, &c. To the sheriff of M. greeting. We command you, that you cause to be made, and levied, of the goods, and chattels, in your bailiwick, of John Gregory, [late of Westminster] in your county, yeoman, 35l.
10 s.

George, &c. To the sheriff of M. greeting. We command you, that you take John Gregory, late of Westminster in your county, yeoman, if he shall be found in your bailiwick, and safely keep him, so that you may have his body before us, in eight days of St. Hilary, wheresoever we shall then be in England, to make satisfaction to Ann Hook, for 35l.
10 s.

Which were awarded to the said Ann, in our court before us, according to the form of the statute, in such case made and provided, for her damages, costs, and charges, which she

Ann Hook
W. N.

This micrograph shows a tissue section with a dense population of cells. The cells exhibit varying degrees of nuclear atypia and are arranged in a somewhat disorganized pattern, which is characteristic of a neoplastic process. The background stroma appears fibrous.

the sustained, by occasion of the delay of execution of a certain judgment obtained by the said *Ann* against the said *John* for 28 l. 10 s. In our court, before Sir *William de Grey*, knight, and his companions, our justices of the Bench, at *Westminster*; as by the record and proceedings thereof, which, for certain causes of error, we lately caused to be brought into our said court before us, and now there remaining, appears to us of record. And for that the said *John*, afterwards in our court before us, did not [prosecute his said writ of error,] * as also appears to us of record.

And have you the said money before us, in eight days of Saint Hilary, wheresoever we shall then be in England, to render to the said *Ann*, for her damages, costs, and charges aforesaid: and this writ, *Witness, &c.*

For Restitution on the REVERSAL by the King's Bench, of a judgment given in the Common Pleas.

GEORGE, &c. To the sheriff of M. greeting. Whereas *Ann Sims* lately, that is to say, in *Trinity term*, in the 19th year of our reign, in our court, before Sir *William de Grey*, knight, and his companions, (then) our jus-

* Or, the said writ of error was duly nonprossed.

The Law and Practice

tices of the *Bench*, at *Westminster*, by our writ, and by the consideration of the said court, recovered against *John Owen*, late of *Westminster* in your county, yeoman, 100 l. which in our said court of the *Bench*, were awarded to the said *Ann*, as well on account of the said *John* not having performed certain promises, and undertakings, by the said *John* made to the said *Ann*; as for her costs and charges, which she had been put unto, about her suit in that behalf; whereof he is convicted, as by the record and proceedings thereof, which we lately caused to be brought into our court before us, for certain causes of error, appears to us of record. *And whereas* we, by reason of diverse errors in the said record and proceedings, and also in giving the said judgment, have *reversed and totally annulled the same*: It is therefore considered, and adjudged, in our said court, before us, that the said *John* be restored to all things which he hath lost by occasion of the said judgment. And for that the said *Ann* sued out execution upon the said judgment, and he the said *John* was thereupon taken in execution for the same, and detained in prison, until payment was made to the said *Ann* of the said 100 l. *Therefore* we command you,

(Fi. Fa.)

(Ca. Sa.)

That of the goods, and chattels, of the said *Ann* in your bailiwick, you cause to be made and levied, the

That you take the said *Ann*, if she shall be found in your bailiwick, so that you may have her body before us,

The Law and Equity

them of the Bench, at *St. Andrew*, by our writ,
 and by the mediation of the said court, re-
 covered against John Owen, late of *Walsingham*,
 in your county, groom, £100 l. which in the
 said court of the Bench, were awarded to the
 said *Ann*, as well on account of the said debt,
 not having performed certain promises and
 undertakings, by the said John made to the
 said *Ann*; as for her costs and charges, which
 she had been put unto, about her suit in the
 bench; whereof he is convicted, as by the
 return and proceedings thereof, which are
 lately called to be brought into our court be-
 fore us, for certain causes of error, appears
 us of record. And whereas we, by reason
 of divers errors in the said record and proceedings,
 and also in giving the said judgment, have
 reversed and totally annulled the same: And the
 same considered, and adjudged, in our
 court, before us, that the said John be restored
 in all things which he hath lost by occasion
 of the said judgment. And for that the said John
 had not execution on the said judgment, and
 he the said John was thereupon taken in execu-
 tion for the same, and detained in prison, until
 payment was made to the said *Ann* of the
 said £100 l. Therefore we command you,

(Fi. Fe.)

(Ca. Sc.)

That of the goods, and chattels, of the said <i>Ann</i> in your bail- wick, you cause to be made and levied, the	That you take the said <i>Ann</i> , if she shall be found in your bail- wick, so that you may have her body before
--	--

saïd 100*l.* and have you that money before us, *on the morrow of the Holy Trinity*, where-soever we shall then be in *England*, to restore to the saïd *John*, the saïd money so awarded to him, by our saïd court before us, upon the *reversal* of the saïd judgment: and have there this writ. Witness, &c.

us, *on the morrow of the Holy Trinity*, where-soever we shall then be in *England*, to make satisfaction to the saïd *John Owen* for the saïd 100*l.* so awarded to him, by our saïd court before us, upon the *reversal* of the saïd judgment: and have there this writ. Witness *William Earl of Mansfield*, at *Westminster*, the 8th day of *May*, in the 20th year of our reign.

Stormont and Way.

¶ The same forms of *Testatum's* and *non-mittas's*, which are used in common executions may be added to any of these, as occasion requires.

Affirmance by the King's Bench, of a judgment on recognizance of bail in the Common Pleas.

(*Fi. Fa.*)

(*Ca. Sa.*)

George, &c. To the sheriff of *M.* greeting. We command you, that you cause to be made and levied, of

George, &c. To the sheriff of *M.* greeting, we command you, that you take *John Friendly*, late of, &c. gentleman,
L 3

the * goods and chattels of *John Friendly*, late of *Duke Street*, in the parish of *Saint Margaret, Westminster*, in your county, gentleman, and of the goods and chattels, of *Richard Goodwill*, late of *Parliament Street*, in the same parish, and county, gentleman, being in your bailiwick, 50 *l.* to be rendered to *Ann Hook*. man, and *Richard Goodwill*, late of, &c. gentleman, if they shall be found in your bailiwick, and them safely keep, so that you may have their bodies before us, in fifteen days of *Saint Hilary*, wheresoever we shall then be in *England*, to make satisfaction to *Ann Hook*, for 50 *l.* to be rendered to the said *Ann*.

According to the form and effect of the award of an execution upon a certain recognize of bail, by the said *John* and *Richard* acknowledged to the said *Ann* in our court, before *Sir William de Grey*, knight, and his companions, (then) our justices of the common Bench, at *Westminster*; as by the record and proceedings of the award of the execution thereof, which we lately caused to come into our court before us, for certain causes of error, appears to us of record. And also 12 *l.* adjudged to the said *Ann* in our said court before us, according to the form of the statute in such case made and provided, for her damages, costs, and charges, which she hath been put unto, by occasion of the delay of the

* *Lil. Ent.* 582. it is Lands.

THE LAW AND EQUITY

the goods and chattels of the said John, and of the said John's wife, and of the said John's heirs, and of the said John's assigns, and of the goods and chattels of the said John and of the said John's heirs, and of the said John's assigns, being in your hands, with, and to be rendered to the said John.

And the said John, and the said John's wife, and the said John's heirs, and the said John's assigns, and the goods and chattels of the said John, and of the said John's wife, and of the said John's heirs, and of the said John's assigns, being in your hands, with, and to be rendered to the said John.

According to the form and effect of the award of an arbitration upon a certain request made by the said John and Richard, and acknowledged by the said John in our court, before Sir John de la Ley, Knight, and his associates, (being) our justices of the peace for the County of Middlesex, as by the record of the proceedings of the award in the said court, which we have called to view, and our court before us, for certain causes of law, and of equity, and of right, and of justice, and of the said John, and of the said John's wife, and of the said John's heirs, and of the said John's assigns, and of the goods and chattels of the said John, and of the said John's wife, and of the said John's heirs, and of the said John's assigns, being in your hands, with, and to be rendered to the said John.

At the City of London, the 10th day of June, 1550.

of Writs of Error.

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execution of the judgment aforesaid, by means of the prosecution of our said writ of error; the said judgment being in our said court before us, in ~~the~~ things affirmed. Whereof the said *John* and *Richard*, are also convicted: as appears to us likewise of record.

And have you the said monies before us, at *Westminster*, in fifteen days of Saint *Hilary*, wheresoever we shall then be in *England*, to render to the said *Ann*, for her damages, costs, and charges aforesaid; and also this writ. Witness, &c.

And have you there this writ. Witness, &c.

Affirmance by the Exchequer chamber, of a judgment of the King's Bench.

(*Fi. Fa.*)

(*Ca. Sa.*)

George, &c. To the sheriff of *M.* greeting. We command you, that of the goods, and chattels of *John Henry*, in your bailiwick, you cause to be made and levied, 40*l.* which *Humphry Hale* lately in our court, before us,

George, &c. To the sheriff of *M.* greeting. We command you, that you take *John Henry*, if he shall be found in your bailiwick, and him safely keep, so that you may have his body before us, at *Westminster*, on

L 4

Monday

at *Westminster* recovered against the said *John*. *Monday next after eight days of Saint Hillary,* to make satisfaction to *Humphry Hale*, for 40*l*.

For his damages which he hath sustained, as well on account of the said *John's* not having performed certain promises, and undertakings, lately made by him to the said *Humphry*, as for his costs, and charges, which he hath been put unto, about his suit in this behalf; whereof the said *John* is convicted, as appears to us of record: and also 18*l*. adjudged to the said *Humphry*, in our court of Exchequer chamber, before our Justices of the common Bench, and our barons of our Exchequer, of the degree of the coif, according to the form of the Statute in such case made and provided, for his damages, costs, and charges, which he hath sustained, and expended, by reason of the delay of the execution of the judgment aforesaid, by means of the prosecution of our writ for correcting error, brought thereupon by the said *John* against the said *Humphry*, in the said Exchequer chamber, the said judgment being there, in all things affirmed; of which the said *John* is also convicted. As by the record and proceedings of our said justices and barons, before them had in the premises, and by them remitted into, and now remaining in our said court before us, at *Westminster*, also appears to us of record.

And

And have you the said monies before us, at *Westminster*, on *Monday next after eight days of Saint Hilary*, to render to the said *Humphry*, for his damages, costs, and charges *aforsaid*. And also this writ. Witness, &c.

And have then there this writ. Witness, &c.
Stormont and Way.

S. & W.

A fieri facias in debt on bond for an administratrix, upon a judgment of the court of Common Pleas affirmed in the King's Bench, in the life-time of the intestate, after a scire facias.

GEORGE, &c. to the sheriff of *M.* greeting. We command you, that of the goods and chattels in your bailiwick, of *Anthony Slack*, late of *Westminster*, in your county, gentleman, you cause to be levied, *500 l.* for a debt, which *George Free*, now deceased, in his life-time, lately in our court, before *Sir William de Grey*, knight, and his companions, our justices of the Bench at *Westminster*, by our writ, and by the consideration of the same court, recovered against him; and also *20 l.* awarded, by the same court, to the said *George*, in his life-time, with his assent, for his damages which he hath sustained, by occasion of the detention of the said debt, whereof the said *Anthony* is convicted,

Recites the
death.

Administra-
tion.

ed. As by the record and proceedings thereof, which, for certain cases of error, we lately caused to be brought into our court before us, and now there remaining, in all things affirmed, appears to us of record: and also 18 l. which in our said court before us, were awarded to the said *George* in his life-time, according to the form of the statute, in that case made and provided, for his damages, costs, and charges, which he sustained, by reason of the delay of execution of the judgment aforesaid, by means of the prosecution of the said writ of error; as also appears to us of record*. And whereas the said *George Free* afterwards (to wit) on the 1st day of *November*, in the 21st year of our reign, died intestate, not having received any satisfaction for his debt, damages, costs and charges aforesaid, or any part thereof. After whose death, (to wit) on the 16th day of *November*, in the 21st year aforesaid, administration of all and singular the goods and chattels, rights, and credits, which were of the said *George*, at the time of his death, were, by *Frederick*, by divine providence, archbishop of *Canterbury*, primate of all *England*, and metropolitan, (to whom the commission of the administration aforesaid did belong, in this behalf;)

* Or thus — And thereupon it was considered in our said court before us, that *Elizabeth Free* the widow relict, and administratrix of all and singular the goods and chattels, rights and credits, which were belonging to the said *George Free* at the time of his death, may have execution against the said *Anthony*, for the debt, damages, costs, and charges aforesaid. And have you that money before us, &c.

was granted, and committed, in due form of law, to *Elizabeth Free*, the widow, and relict of the said deceased. And for that in our said court before us, it is considered, that the said *Elizabeth* have execution against the said *Anthony*, for the debt, damages, costs and charges aforesaid, as also of 4*l.* for her damages, costs and charges by our court before us, awarded to the said *Elizabeth*, according to the form of the statute in such case made and provided: whereof the said *Anthony* is convicted; as appears to us likewise of record. And have you that money before us, on the octave of Saint Hilary, wheresoever we shall then be in England, to render to the said *Elizabeth*, for the debt, and the several damages, costs, and charges aforesaid: And this writ. Witness, &c.

Scire facias ad audiendum errores. on error to reverse outlawry in the King's Bench.

GEORGE the third, &c. To the sheriff's of London greeting. Whereas *Ann Sim's*, lately in our court, before us, impleaded *John Owen* late of London, yeoman, in a plea, That whereas, (transcribe the original writ) to the damage of the said *Ann* of 100*l.* as it is said. And the said *John* because he did not come before us, to answer to the said *Ann* in the same plea, was put in exigent, and in the hustings of the Guildhall of the city of London, on that occasion, was afterwards, outlawed; as by the the record and proceedings thereof, in our said court before us remaining, manifestly appears: and

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and because, on the part of the said *John*, as we are informed, a manifest error hath happened in the record and proceedings aforesaid, and also in the pronouncing of the outlawry aforesaid, thereupon the same *John* hath prosecuted our writ of error, directed to our justices assigned to hold pleas in our court before us, commanding them, that inspecting the record and proceedings aforesaid, they farther cause to be done therein, for the annulling of the outlawry aforesaid, what of right, and according to the law and custom of this kingdom of *England*, shall be necessary to be done in the premisses. And the said *John* hath thereupon duly assigned his errors, on record; as by the inspection thereof likewise appears to us: Therefore we command you, that by good and lawful men of your bailiwick, you give notice to the said *Ann Sims*, that she be before us, *on the morrow of All Souls*, wheresoever we shall then be in *England*, to hear the record and proceedings aforesaid, and also the errors, in the pronouncing of the outlawry aforesaid, assigned, if she shall think fit. And farther to do and receive what our said court, before us, shall then and there consider of her, in this behalf. And have there the names of those by whom you shall give her notice, together with this writ. Witness *William* Earl of *Mansfield*, at *Westminster*, the 23d day of *June*, in the 19th year of our reign.

Stormont and Way.

Scire

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and heretic, on the part of the said John, as
was informed, a certain error, which
opened in the record and proceedings aforesaid,
and also in the pronouncing of the sentence
aforesaid, that upon the same John had been
condemned and was of error, directed to our justice
assigned to him, that in our court before us
commencing them, and also in the record
and proceedings aforesaid, that further error
to be done therein, for the annulling of the
aforesaid sentence, what of right, and accord-
ing to the law and customs of this kingdom of
England, shall be necessary to be done in the
premises. And the said John hath thereupon
daily alleged his error, as aforesaid: as by the
indignation thereof likewise appears to us.
Therefore we command you, that by your own
lawful men of your bailiwick, you give notice
to the said John, that the he appear to us, in
the court of All Souls, where record we will
then be in England, to hear the record and
proceedings aforesaid, and also the error, in
the pronouncing of the sentence aforesaid, at
Oxford, if he shall think fit. And further, if
he and receive what our said court, before us,
shall then and there consider of, as in that
behalf. And have that the names of those
by whom you shall give our notice, together
with this writ. Witness our hand at
Westminster, the 22nd day of June
in the 5th year of our reign.

Edmund and Henry

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Scire facias *against bail in error on a judgment of the King's Bench.*

GEORGE the third, by the grace of God, of *Great Britain, France, and Ireland*, king, defender of the faith, &c. To the sheriff of *Middlesex*, greeting: Whereas *John Spencer* of *King-street*, in the parish of *St. Margaret, Westminster*, in the county of *Middlesex*, gentleman, and *William Spry*, of *Bridge-street*, in the same parish and county, gentleman, on the third day of *May*, in the nineteenth year of our reign, before Sir *William Henry Ashburst*, knight, one of our justices assigned to hold pleas in our court before us, at his chambers in *Serjeant's Inn, Chancery-lane, London*; came in their proper persons, and according to the form of the statute in such case made and provided, acknowledged themselves, and each of them separately, did acknowledge himself, to owe to *Job Samson*, the sum of 200*l.* of lawful money of *Great Britain*, to be paid to the said *Job*, his executors, or assigns; and unless they should so do, the said *John* and *William* did grant and agree, and each of them for himself did grant and agree, that the said 200*l.* of their, and each of their, lands and chattels, should be made and levied to the use of the said *Job*, upon the condition following, to wit: *That whereas* the aforesaid *Job*, lately, in our court before us, at *Westminster* by bill, without our writ, and by the judgment of the same court, recovered

covered against *Walter Raleigh*, 100*l.* for his damages, which he had sustained, as well by means of the not performing certain promises, and undertakings, then lately made by the said *Walter*, to the said *Job*, as for his costs, and charges, by him, about his Suit, in that behalf expended, whereof the said *Walter* had been convicted; as appeared of record in our said court before us, at *Westminster*: And whereas, the said *Walter* brought a writ of error upon the judgment aforesaid, returnable before our justices of the common Bench, and barons of our Exchequer, of the degree of the coif, in our Exchequer chamber, at *Westminster*, on *Wednesday* the 12th day of *May*, in the said 19th year of our reign: If therefore the said *Walter* should prosecute the said writ of error with effect, and also should satisfy and pay to the said *Job*, if the said judgment should be affirmed, or the said writ of error be discontinued, in his default, or he should be nonsuit therein, as well the damages, costs, and charges aforesaid, adjudged upon the said judgment, as also all such costs, charges, and damages, as should be awarded to the said *Job*, for delaying of execution of the judgment aforesaid, for prosecuting the said writ of error; then the said recognizance should be void, or else to be and remain in full force and virtue. Which said recognizance, the said justice afterwards, (to wit) on the said 3d day of *May*, in the 19th year aforesaid, brought into our said court before us, to be inrolled, and the same was then and there inrolled, in our said court before us, as of the said *Easter* term, in the 19th year
afore-

aforesaid. As by the record thereof now remaining in our said court before us, manifestly appears. *And whereas* such were the proceedings, in the said cause, upon the writ of error aforesaid, in our said court of Exchequer chamber aforesaid, at *Westminster* aforesaid, before our said then justices of the *Bench* aforesaid, and the barons of our court of Exchequer aforesaid, of the degree of the *coif*, that afterwards, (to wit,) on the 6th day of *November*, in *Michaelmas* term, in the 20th year of our reign*, the said writ of error was duly nonprossed, and 12 *l.* were then and there adjudged, in and by the said court of our Exchequer chamber, at *Westminster*, to the said *Job*, for his costs and damages, on occasion of the delay of execution of the aforesaid judgment, on pretence of the prosecution of our said writ of error. As by the record thereof, remitted into our court before us, at *Westminster* aforesaid, from our said court of our Exchequer chamber, and now there remaining, manifestly appears. *Nevertheless* the said *Walter* hath not paid the said damages, costs, and charges, adjudged to the said *Job*, on the said judgment, or any part thereof; or the said 12 *l.* so adjudged to the said *Job*, for his costs and damages aforesaid, or any part thereof; as we have received information in our said court before us, from the said *Job*; wherefore the said *Job* hath intreated us to provide him a proper remedy in this behalf; and we being wil-

* Or. the judgment aforesaid, was in all things affirmed.
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ling that what is just should be done on this occasion, command you, that by good and lawful men of your bailiwick, you make it known to the said *John* and *William*, that they be before us, at *Westminster*, on *Monday* next after eight days of *Saint Hilary*, to shew if they have, or know of, any thing to say for themselves, why the said *Job* ought not to have his execution against them, and each of them, for the said 200 *l.* by them jointly, and severally, acknowledged, in form aforesaid, according to the force, form and effect of the said recognizance, if it shall seem expedient to them so to do. And further to do and receive what our court before us, shall then and there consider of them in this behalf; and have you there then the names of those by whom you shall make it known to them, and this writ. Witness *William* Earl of *Mansfield*, at *Westminster*, the 29th day of *November*, in the 20th year of our reign.

Stormont and Way.

Seire facias against the executors of bail in error in the Exchequer chamber.

GEORGE the third, &c. To the sheriff of *Middlesex*, greeting. Whereas *John Spencer* of *King-street*, in the parish of *Saint Margaret, Westminster*, in the county of *Middlesex*, gentleman, on the 3d day of *May*, in the 19th year of our reign, before Sir *William Henry Ashurst*, knight, one of our justices assigned to hold pleas in our court before us, at his

his chambers in *Serjeant's Inn, Chancery-lane, London*, came in his proper person, and according to the form of the statute in such case made and provided, acknowledged himself to owe to *Job Samson*, the sum of 200 *l.* of lawful money of *Great Britain*, to be paid to the said *Job*, his executors, or assigns; and unless he should so do, the said *John* did grant and agree, that the said 200 *l.* of his lands, and chattels, should be made and levied, to the use of the said *Job*, upon the condition following, (to wit;) *That whereas* the aforesaid *Job*, lately in our court before us, at *Westminster*, by bill, without our writ, and by the judgment of the same court, recovered against *Walter Raleigh*, 100 *l.* for his damages which he had sustained, as well by means of the not performing certain promises and undertakings, then lately made by the said *Walter*, to the said *Job*, as for his costs, and charges, by him about his suit in that behalf expended, whereof the said *Walter* had been convicted; as appeared of record in our said court before us, at *Westminster*. *And whereas* the said *Walter* brought a writ of error, upon the judgment aforesaid, returnable before our justices of the common *Bench*, and barons of our *Exchequer*, of the degree of the *coif*, in our *Exchequer* chamber, at *Westminster*, on *Wednesday* the the 12th day of *May*, in the said 13th year of our reign. *If therefore* the said *Walter* should prosecute the said writ of error with effect, and also should satisfy and pay to the said *Job*, (if the said judgment should be affirmed, or the said writ of error be discontinued in his default, or he should be

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onsuited therein,) as well the damages, costs and charges aforesaid, adjudged upon the said judgment, as also all such costs, charges, and damages, as should be awarded to the said *Ann*, for delaying of execution of the judgment aforesaid, for prosecuting the said writ of error; then the said recognizance should be void, or else to be and remain in full force and virtue. Which said recognizance, the said justice, afterwards, (to wit) on the said 3d day of *May*, in the 19th year aforesaid, brought into our said court before us, to be inrolled, and the same was then and there inrolled in our said court before us, as of the said *Easter* term, in the 19th year aforesaid: As by the record thereof, now remaining in our court before us, manifestly appears. *And whereas* such were the proceedings, in the said cause upon the writ of error aforesaid, in our said court of *Exchequer Chamber* at *Westminster* aforesaid, before our said then Justices of the *Bench* aforesaid, and the barons of our court of *Exchequer* aforesaid, of the degree of the *coif*, that afterwards, (to wit) on the 6th day of *November*, in *Michaelmas* term, in the 20th year of our reign, the said writ of error * was duly nonprossed, and 12 *l.* were then and there adjudged, in and by the said court of our *Exchequer* chamber, at *Westminster*, to the said *Job* for his costs, and damages, on occasion of the delay of execution of the aforesaid judgment, by the prosecution of our said writ of error; as by the record thereof, remitted into our court before us, at *Westminster* aforesaid, from our said court of our *Exchequer* chamber, and now there remaining,

* Or, the judgment aforesaid was in all things affirmed manifestly

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order thereon, in well and lawfully
and lawfully afore said, and as the
judgment, in also an inch coin, changed, in
damages, as should be awarded to the said
for delay and execution of the judgment
said, for prosecuting the said writ of error, the
the said writ should be void, or else
be and remain in full force and virtue. And
said recognizance, the said justice, afterwards
(to wit) on the first day of May, in the
year aforesaid, brought into our said court a
writ, to be voided, and the same writ
and there voided in our said court before
us, the said *Edward* King, in the 15th year
aforesaid: As by the record thereof, now
existing in our court before us, manifestly
appears. And whereas there were the writs
aforesaid, in our said court upon the writ of error
aforesaid, in our said court of *Edward*
King, then Judges of the said
said, and the barons of our court of
the said *Edward*, of the degree of the
the said writ, in which on the 15th day
November, in *Edward* King, in the
year of our reign, the said writ of error
only brought, and as it was then and
aforesaid, in and by the said court of
the said *Edward*, at *Westminster*, to the
the said writ and damages, on the
of the delay of execution of the said
judgment, by the prohibition of our
writ of error, as by the record
remained in our court before us, at *Westminster*
as aforesaid, from our said court of
the said *Edward*, and now there remains

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manifestly appears. And afterwards, the said *John Spencer*, at *Westminster*, in your county, made his last will and testament in writing, and thereby appointed *Thomas Atall* executor thereof; and afterwards died there; the said *Job* being no ways satisfied of his damages, costs and charges aforesaid, adjudged on the said judgment, or any part thereof, or the said 12 l. to adjudged to the said *Job*, for his costs and damages aforesaid, or any part thereof; as we have received information, in our said court before us, from the said *Job*: Wherefore the said *Job* hath intreated us to provide him a proper remedy in this behalf: And we being willing that what is just should be done on this occasion, command you, that by good and lawful men of your bailiwick, you make it known to the said *Thomas Atall*, as executor in form aforesaid, that he be before us, at *Westminster*, on *Wednesday* next after the octave of the *Holy Trinity*, to shew if he hath or knows of any thing to say for himself, why the said *Job* ought not to have his execution against him, for the said 200 l. by the said *John* acknowledged in form aforesaid, according to the force, form, and effect of the said recognizance; if it shall seem expedient to him so to do. And further to do and receive what our court before us, shall then and there consider of him in this behalf. And have you there then the names of those by whom you shall make it known to him, and this writ. Witness *William Earl of Mansfield*, at *Westminster*, the 8th day of *May* in the 20th year of our reign.
Stormont and Way.

Previous to any proceedings against the bail, the recognizance must be entered on a roll by itself, by the attorney for the defendant in error, docketed and left in the treasury at *Westminster*; thus,

The term the bail was given in.

Pleas before our lord the king, at Westminster, of Michaelmas term, in the 21st year of the reign of our sovereign lord George the third, by the grace of God, of Great Britain, France, and Ireland, king, defender of the faith, &c. And in the year of our Lord, 1780.

Roll 454.

England, **B**E it remembered, that on to wit, Tuesday next after fifteen days from the day of Saint Martin, in this same term, before our lord the king, at Westminster, Sir William Henry Ashburst, knight, one of the justices of our said lord the king, assigned to hold pleas before the king himself, hath here recorded, that on the eighteenth day of November, in the year of our Lord, one thousand, seven hundred and eighty, before the same justice, at his chambers, situate in Serjeant's-Inn, Chancery-Lane, London, came John Free of High-Street, in the parish of Saint Mary-le-Bone, otherwise Marybone, in the county of Middlesex, gentleman, and Joseph Cape, of Upper Grosvenor's Street, in the parish of Saint George Hanover Square, in the said county of Middlesex, gentlemen, in their own

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proper persons, and according to the form of the statute in such case made and provided, acknowledged themselves, and each of them, separately, did acknowledge himself, to owe to *Francis Martin*, the sum of three hundred and fifty-four pounds, of lawful money of *Great Britain*, to be paid to the said *Francis*, his executors, or assigns. And unless they should so do, the said *John* and *Joseph*, did grant and agree, that the said three hundred and fifty-four pounds of their, and each of their lands, and chattels, should be made and levied to the use of the said *Francis*.

The condition of the above recognizance is such, *That whereas* the aforesaid *Francis* lately, in the court of our said lord the king, before the king himself, at *Westminster*, by bill, without the writ of our said lord the king, and by the judgment of the same court, recovered against *Richard Berry*, one hundred and seventy-seven pounds for his damages which he hath sustained, as well by means of the not performing certain promises and undertakings, lately made by the said *Richard*, to the said *Francis*, as for his costs and charges, by him about his suit in this behalf expended; whereof the said *Richard* hath been convicted, as appeareth of record, in the said court of the said lord the king, before the king himself, at *Westminster*. *And whereas* the said *Richard* hath brought a writ of error upon the judgment aforesaid, returnable before the justices of our said lord the king of the *Common Bench*, and barons of his *Exchequer*, of the degree of the coif, in the *Exchequer Chamber*, on *Saturday* the

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twenty-fifth day of *November*, in the said twenty-first year of the reign of our said lord the king. *If therefore* the said *Richard* shall prosecute the said writ of error with effect, and also shall satisfy and pay to the said *Francis*, if the said judgment shall be affirmed, or the said writ of error be discontinued in his default, or he shall be nonsuit therein, as well the damages, costs, and charges aforesaid, adjudged upon the said judgment; as also all such costs, charges, and damages, as shall be awarded to the said *Francis*, for delaying of execution of the said judgment, by the prosecution of the said writ of error: then this recognizance to be void; or otherwise, to be and remain in full force and virtue.

APPENDIX

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APPENDIX.

PLEAS in the *Exchequer Chamber* at *The general*
Westminster, before Sir *William de Grey*, proceedings
 knight, chief justice of the *Common Bench* of in the *Ex-*
 our sovereign lord the king, Sir *John Skynner*, *chequer Cham-*
 knight, chief baron of the *Exchequer* of our ber.
 sovereign lord the king, of the degree of the
coif, Sir *Henry Gould*, knight, Sir *William*
Blackstone, knight, and Sir *George Nares*, knight,
 the three other justices of the *Common Bench* of
 our sovereign lord the king: and also before
 Sir *James Eyre*, knight, Sir *Beaumont Hotbam*,
 knight, and Sir *Richard Perryn*, knight, the
 three other barons of the *Exchequer* of our so- The day the
 vereign lord the king, of the degree of the cause comes
coif, on the day of into the *Ex-*
 in the twentieth year of the reign of king *chequer Cham-*
George the third, &c. ber.

Our sovereign lord the king hath sent The writ of
 to his right trusty, and well beloved, *William* error.
 Earl of *Mansfield*, his chief justice appointed to
 hold *pleas* before our lord the king himself, his
 writ in these words, that is to say, *George*
 the third, by the grace of God, of *Great Bri-*
tain, France, and Ireland, king, defender of
 the faith, &c. To our right trusty and well-
 beloved, *William* Earl of *Mansfield*, our chief
 justice appointed to hold *pleas* in our court
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before us, greeting: whereas by the Statute made in the parliament holden at *Westminster*, the 23d day of *November*, in the 27th year of the reign of the lady *Elizabeth*, late queen of *England*, it was by the authority of the same parliament, (amongst other things,) enacted, that when any judgment, at any time then after, should be given in the court of *King's Bench*, in any suit or action of *debt*, *detinue*, *covenant*, *accompt*, *action upon the case*, *ejectment*, or *trespass*, first commenced, or to be commenced there, other than such only where we should be a party, the plaintiff, or the defendant, against whom such judgment should be given, may, at his election, sue forth out of the court of *Chancery*, a special writ of error, to be devised in the said court of *Chancery*, directed to the chief justice of the said court of *King's Bench*, for the time being, commanding him to cause the record, and all things touching the said judgment, to be brought before the justices of the *Common Bench*, and the barons of the *Exchequer*, into the *Exchequer Chamber*, there to be examined by the said justices of the *Common Bench*, and barons aforesaid; which said justices of the *Common Bench*, and such barons of the *Exchequer*, as are of the degree of the *coif*, or *six* of them at the least, by virtue of the said act, shall thereupon have full power, and authority, to examine all such errors as shall be assigned, or found, in or upon such judgment; and thereupon to reverse or affirm the said judgment as the law shall require: other than for errors to be assigned or found for, or concern-
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ing the jurisdiction of the said court of *King's Bench*, or any want of form in any writ, return, plaint, bill, declaration, or other pleading, process, verdict, or proceeding whatsoever. And that after the said judgment shall be affirmed, or reversed, the said record, and all things touching the same, shall be removed and brought back into the said court of *King's Bench*, that such further proceedings may be had thereupon, as well for execution, as otherwise, as shall appertain: as in the said statute is more fully contained. And forasmuch as in the record and process, as also in giving of judgment, in a plaint which was before us by bill, between *William Montgomery*, and *Thomas Pembroke*, of a plea of trespass on the case, as it is said, manifest error hath intervened, to the great damage of the said *Thomas*, as by his complaint we are informed: which said error no way toucheth us, or the jurisdiction of the said court of the said *Bench*, or any want of form in any writ, return, plaint, bill, declaration, or other pleading, process, verdict, or proceeding whatsoever, as we are informed. We therefore, willing that the said error, if any be, be duly amended, according to the form of the said statute, and full and speedy justice done to the said parties in this behalf; do command you, that if judgment be given thereupon, that then you cause the record and process aforesaid, with all things touching the same, to come before the said justices of the *Common Bench*, and barons of our said *Exchequer*, into our *Exchequer Chamber*, on *Saturday*, the 6th day of *November* next ensuing, that

that the said justices and barons, viewing and examining the record and process aforesaid, may cause further to be done therein, as of right, and according to the form of the said statute, shall be meet to be done. Witness ourself, at *Westminster*, the twenty-third day of *June*, in the twentieth year of our reign.

The answer of *William* Earl of *Mansfield*, chief justice within-named.

The record and process of the plaint, whereof mention is within made, with all things touching the same, to the justices and barons within specified, at the day and place within contained, I certify in a certain schedule to this writ annexed, as to me is within-commanded.

Mansfield.

The transcript of the record from the King's Bench.

Pleas before our lord the king, at *Westminster*, of the term of the *Holy Trinity*, in the twentieth year of the reign of our sovereign lord *George* the third, by the grace of God, of *Great Britain, France, and Ireland*, king, defender of the faith, &c. Roll. 835.

Middlesex, (to wit) *William Montgomery* puts in his place *John Den* his attorney, against *Thomas Pembroke*, in a plea of trespass on the case.

Middlesex, (to wit) the said *Thomas Pembroke* puts in his place *Richard Fen* his attorney, at the suit of the said *William Montgomery*, in the plea aforesaid.

Middlesex,

Middlesex, (to wit) **Be it remembered**, that in *Easter* term last past, before our lord the king at *Westminster*, came *William Montgomery*, by *John Den* his attorney, and brought into the court of the said lord the king, then there, his bill against *Thomas Pembroke*, being in the custody of the marshal of the marshalsea of the said lord the king, before the king himself, of a plea of trespass on the case; and there are pledges for the prosecution, (to wit) *John Doe*, and *Richard Roe*: which said bill follows in these words,

(to wit.) **Middlesex**, (to wit) *William Montgomery*, complains of *Thomas Pembroke*, being in the custody of the marshal of the marshalsea of our lord the king, before the king himself. For that whereas the said *Thomas*, on the first day of *January*, in the year of our lord, one thousand, seven hundred, and seventy-nine, at *London*,* (to wit) at *Westminster*, in the county of *Middlesex* aforesaid, made his certain note in writing, commonly called a promissory note, his own hand being thereunto subscribed, bearing date the same day and year aforesaid, and then and there delivered the said note to the said *William*: by which same note the said *Thomas* promised to pay to the said *William*, by the name and description of Mr. *William Montgomery*, or order, one month after date, the sum of fifty pounds, being for value received. By reason whereof, and by force of the statute in such case made and provided, the said *Thomas* became liable to pay to the said *William* the

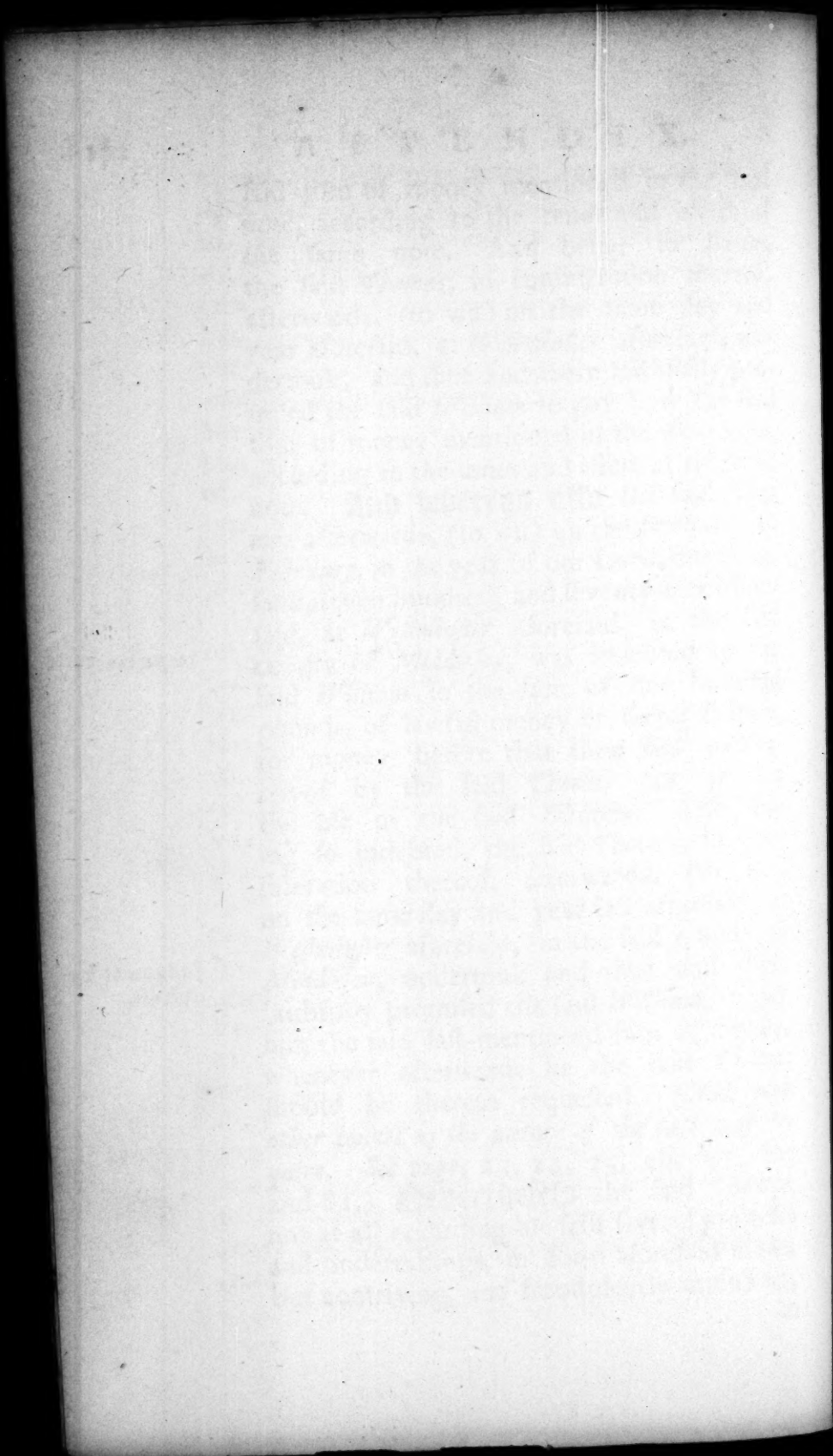
The declaration by *J. Lane, Esq.*

* The note was dated *London*, 1st *January*, 1779.

said

said sum of money mentioned in the said note, according to the tenor and effect of the same note. And being so liable, the said *Thomas*, in consideration thereof, afterwards, (to wit) on the same day and year aforesaid, at *Westminster* aforesaid, undertook, and then and there faithfully promised the said *William* to pay him the said sum of money mentioned in the said note, according to the tenor and effect of the same note. **And whereas** also the said *Thomas* afterwards, (to wit) on the sixth day of *February*, in the year of our Lord, one thousand, seven hundred, and seventy-nine aforesaid, at *Westminster* aforesaid, in the said county of *Middlesex*, was indebted to the said *William* in the sum of one hundred pounds, of lawful money of *Great Britain*, for money before that time *had and received* by the said *Thomas* for and to the use of the said *William*. And being so indebted, the said *Thomas*, in consideration thereof, afterwards, (to wit) on the same day and year last aforesaid, at *Westminster* aforesaid, in the said county of *Middlesex*, undertook and then and there faithfully promised the said *William*, to pay him the said last-mentioned sum of money, whenever afterwards he the said *Thomas* should be thereto requested. (*Add such other counts as the nature of the case may require. See pages 23, 24, 25, 26, 27, 80, and 81.*) **Nevertheless** the said *Thomas*, not at all regarding his said several promises and undertakings, in form aforesaid made, but contriving, and fraudulently intending,

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to deceive and defraud the said *William* in this behalf, hath not paid to the said *William*, the said several sums of money, or either of them, or any part thereof. (Although the said *Thomas* afterwards, (to wit) on the same day and year last aforesaid, and often since, at *Westminster* aforesaid, in the said county of *Middlesex*, hath been requested by the said *William* to pay him the same.) But to pay the same to the said *William* he the said *Thomas* hath hitherto wholly refused, and still doth refuse, and the same are still unpaid; to the damage of the said *William*, of one hundred pounds, and therefore he brings his suit, &c.

And now at this day, that is to say, on *Friday* next after the morrow of the *Holy Trinity*, in this same term, before our lord the king, at *Westminster*; comes the said *William* by his attorney aforesaid; And the said *Thomas*, although at this same day solemnly called, doth not come, nor say any thing in bar or preclusion of the said action, of the said *William*; whereby the said *William* remains thereof undefended against the said *Thomas*. For which reason the said *William* ought to recover his damages, on account of the premises, against the said *Thomas*. But because it is not known to the court of our said lord the king, now here, what damages the said *William* hath sustained by reason of the said *Thomas* not having performed his said promises and undertakings; it is therefore commanded to the sheriff of the said county of *Middlesex*, that,

Imparlanco;

Judgment by default.

Inquiry
awarded.

Inquisition
returned.

Judgment
signed the

that, by the oath of twelve good and lawful men of his bailiwick, he diligently inquire what damages the said *William* hath sustained, as well on occasion of the said *Thomas's* not having performed his several promises and undertakings aforesaid, as for his the said *William's* costs and charges, which he hath been put unto, about his suit in this behalf. And that the said sheriff send the inquisition which he shall take thereupon to our lord the king, at *Westminster*, on *Wednesday next after three weeks of the Holy Trinity*, under his seal, and the seals of those by whose oath he shall take the said inquisition, together with the writ of our said lord the king to him thereupon directed. The same day is given to the said *William* at the same place. At which day before our lord the king, at *Westminster*, comes the said *William* by his attorney aforesaid; and the sheriff (to wit) *Robert Peckham*, Esq; and *Richard Clark*, Esq; returns a certain inquisition, indented, taken before him, at the *Guildhall, Westminster*, in the said county of *Middlesex*, on the twenty third day of *June*, in the twentieth year of the reign of our said lord the king, by virtue of the said writ of inquiry, by the oath of twelve good and lawful men of his bailiwick: whereby it is found, that the said *William* hath sustained damages, by occasion of the premises aforesaid, besides his costs and charges, which he hath been put unto about his suit, in this behalf, to 52 l. 10 s. And for those costs and charges to twenty shillings. — Therefore it is considered, that the said *William* do recover

ver against the said *Thomas* his damages 29th day of
aforesaid, by the inquisition aforesaid, in *June 1779.*
form aforesaid found; and also eleven
pounds and ten shillings, adjudged by the
court of our said lord the king, now here,
to the said *William*, by his consent, for the
increase of his costs and charges aforesaid :
which said damages in the whole amount
unto sixty four pounds. And the said *Tho-*
mas in mercy, &c.

Mercy.

And thereupon comes here into court in
the said *Exchequer Chamber*, the said *Thomas* General er-
in his proper person, and prays a day to as- ror assigned.
sign error, or errors, in the record and pro-
ceedings aforesaid : whereupon a day is given
to him, by the court here, to assign error, or
errors, in the record and proceedings afore-
said, until the day of next &c.

The next sit-
ting of the
court.

Pleas in the *Exchequer Chamber*, at *West-*
minster, before Sir *William de Grey*, knight,
chief justice of the *Common Bench* of our sove-
reign lord the king, Sir *John Skynner*, knight,
chief baron of the *Exchequer* of our sove-
reign lord the king, of the degree of the
coif, Sir *Henry Gould* knight, Sir *William*
Blackstone, knight, Sir *George Nares*, knight,
the three other justices of the *Common Bench*
of our sovereign lord the king; and also before
Sir *James Eyre*, knight, Sir *Beaumont Hotbam*,
knight, and Sir *Richard Perryn*, knight, the
three other barons of the *Exchequer* of our
sovereign lord the king, of the degree
of the coif, on *Monday* the first day of *Feb-*
ruary, in the twentieth year of the reign of
king *George* the third, &c.

Adjournment
day.

The first re-
turn in term
in the *Ex-*
chequer Cham-
ber.

At which day comes here into court, in
the said *Exchequer Chamber*, the said *Thomas*

in

in his proper person, and says that in the record and proceedings aforesaid, and also in giving the said judgment, there is manifest error, in this, that is to say, that it appears by the record aforesaid, that the judgment aforesaid, in form aforesaid given, was given for the said *William* against the said *Thomas*: whereas by the law of the land, judgment ought to have been given for the said *Thomas* against the said *William*: and therefore in that there is manifest error; and the said *Thomas* prays the writ of our lord the king, directed to the sheriff of *Middlesex* aforesaid, to give notice to the said *William*, that he be here to hear the record and proceedings aforesaid; and it is granted to him. Therefore the sheriff is commanded, that by good and lawful men of his bailiwick, to give notice to the said *William* that he be here, in the said *Exchequer Chamber*, on *Wednesday*, the 28th day of *April* next, &c.

The first return in *Easter* term.

Pleas in the *Exchequer Chamber* at *Westminster*, before Sir *William de Grey*, knight, chief justice of the *Common Bench* of our sovereign lord the king, Sir *John Skynner*, knight, chief baron of the *Exchequer* of our sovereign lord the king, of the degree of the *coif*, Sir *Henry Gould*, knight, Sir *William Blackstone*, knight, and Sir *George Nares*, knight, the three other justices of the *Common Bench* of our sovereign lord the king; and also before Sir *James Eyre*, knight, Sir *Beaumont Hotham*, knight, and Sir *Richard Perryn*, knight, the three other barons of the *Exchequer* of our sovereign lord the king.

of the degree of the *coif*, on *Wednesday* the 28th day of *April* in the twentieth year of the reign of king *George* the third, &c.

At which day comes here into court, in the said *Exchequer Chamber*, as well the said *Thomas*, in his proper person, as the said *William*, in his proper person, and the said sheriff did not return the said writ, nor did any thing thereupon: therefore the said *Thomas*, as before, says, that in the record and proceedings aforesaid, and also in giving the said judgment, there is manifest error, by alledging the error aforesaid, by him above for error assigned, and alledged; and prays that the said judgment, by reason of that error, and other errors in the record and proceedings aforesaid, may be reversed, annulled, and entirely held for nothing. And the said *William* says, there is not any error in the record and proceedings aforesaid, or in giving the judgment aforesaid; and prays that the court of *Exchequer Chamber* of our lord the king, here, would proceed to examine as well the record and proceedings aforesaid, as the aforesaid cause by the said *Thomas* above assigned for error; and that the said judgment may be in all respects affirmed. But because the court of our lord the king, here, is willing to advise of and upon the premisses, before judgment is given thereupon; a day is given to the said parties here, in the said *Exchequer Chamber*, until *Friday* the 11th day of *June* The day of next, &c. to hear judgment thereupon; adjournment, for that the court of our lord the king of

N

the

the *Exchequer Chamber* is not yet thereof advised, &c.

Middlesex, (to wit) *Thomas Pembroke*, puts in his place, *Richard Fan* his attorney, against *William Montgomery*, in a plea of correcting errors.

Middlesex, (to wit.) The said *William Montgomery*, puts in his place *Jobu Den* his attorney, at the suit of the said *Thomas Pembroke* in the plea aforesaid.

Pleas in the *Exchequer Chamber*, at *Westminster*, before Sir *Jobu Skynner*, knight, chief baron of the *Exchequer* of our sovereign lord the king, of the degree of the *coif*, Sir *Henry Gould*, knight, Sir *William Blackstone*, knight, and Sir *George Nares*, knight, three of the justices of the *Common Bench* of our sovereign lord the king; and also before Sir *Beaumont Hotbam*, knight, and Sir *Richard Perryn*, knight, two of the barons of the *Exchequer* of our sovereign lord the king, of the degree of the *coif*, on *Friday* the 11th day of *June*, in the twentieth year of the reign of king *George* the third, &c.

At which day comes here into court, in the said *Exchequer Chamber*, as well the said *Thomas*, as the said *William*, by their attorneys aforesaid. Whereupon the premisses being considered, and as well the record and proceedings aforesaid, and the judgment thereon given, as also the cause for error above assigned, being, by the court of our lord the king here, diligently examined, and fully understood: It appears to our said court of our lord the king here, that the
judg.

The names of
the judges
present at the
Affirmance.

The following is a list of the names of the persons who have been appointed to the various offices of the County of ...

... of the County of ...

... of the County of ...

judgment aforesaid is not in any wise erroneous, or defective, and that in the record and proceedings aforesaid there is not any error. **Therefore it is considered,** that the judgment aforesaid be in all respects affirmed, and stand in it's full force, strength, and effect: the said cause for error above assigned and alledged in any wise notwithstanding. **And it is further considered,** that the said *William* do recover against the said *Thomas*, 18*l.* adjudged to the said *William*, at his request, by the court of our lord the king, here, according to the form of the statute in that case made and provided, for his damages, costs, and charges, which he hath sustained, by reason of the delay of the execution of the judgment aforesaid, by the prosecution of the said writ of error. *Whereupon* the record and proceedings of the said justices of the *Common Bench*, and the said barons of the *Exchequer*, before them had in the premisses, by the said justices and barons before our lord the king, wheresoever, *&c.* *Are remitted*, according, to the form of the statute of the 27th year of the reign of queen *Elizabeth*, *&c.*

Nonpros in error in the *Exchequer Chamber*.

And thereupon comes here into court, in the said Exchequer Chamber the said William in his proper person, and prays a day to assign error, or errors in the record and proceedings aforesaid; whereupon a day is given him by the court here to assign error, or errors, in the record and proceedings aforesaid until —

Adjournment
day.

Pleas in the Exchequer Chamber, at Westminster, before Sir William de Grey, knight, chief justice of the Common Bench of our sovereign lord the king, Sir John Skynner, knight, chief baron of the Exchequer of our sovereign lord the king, of the degree of the coif, Sir Henry Gould, knight, Sir William Blackstone, knight, and Sir George Nares, knight, the three other justices of the Common Bench of our sovereign lord the king; and also before Sir James Eyre, knight, Sir Beaumont Holtam, knight, and Sir Richard Perryn, knight, the three other barons of the Exchequer of our sovereign lord the king, of the degree of the coif, on the day of in the twenty-first year of the reign of king George the third, &c.

Affirmance
day.

At which day the said William, being solemnly called, did not come, neither does he farther prosecute his said writ of error. Therefore it is considered, that the said William be in mercy, &c. And it is farther considered, that the said Thomas do recover against the said William 12 l. adjudged to the said Thomas at his

his request by the court of our lord the king, according to the form of the statute in that case made and provided, for his damages, costs and charges, which he hath sustained, and been put to, by occasion of the delay of the execution of the judgment aforesaid, and on pretence of prosecuting the said writ of error. *Whereupon* the record and proceedings of the said justices of the *Common Bench*, and the said barons of the *Exchequer*, before them had in the premisses, hy the said justices of the *Common Bench*, and barons of the *Exchequer*, before our lord the king wheresoever, &c. *Are remitted*, according to the form of the statute of the 27th year of the reign of queen *Elizabeth*, &c.

The Exchequer Chamber is a branch of the court of Exchequer, in which there are no more than two return days in every term: one is called the general affirmance day, being appointed by the judges of the Common Pleas, and barons of the court of Exchequer, to be held a few days after the beginning of every term for the general affirmance or reversal of judgments. The other is called the adjournment day, which is usually held a day or two before the end of every term: on the first of these days judgments are affirmed, or reversed, or writs of error nonprossed: The intent of the latter is, to finish such matters as were left undone at the former; on which last mentioned day also (as well as on the first) judgments may be affirmed or reversed, or writs of error nonprossed, on paying sixteen shillings extra-
N 3
ordinary

A P P E N D I X.

ordinary to the clerk of the errors, and setting down the cause for affirmance two days before the adjournment day: the clerk of the errors charging nine shillings and sixpence for every cause set down for the general affirmance day, and one pound five shillings and six pence for the adjournment day.

THE E N D.

A P P E N D I X

in duty to the clerk of the court
down the road for assistance and for the
information of the clerk of the court
these findings and purposes for the
court for the general information of
the court for findings and for peace
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T H E

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E. E. B. H.

E R R A T A.

In page 13, line 23. for II. & II. *W.* III. read X. & XI. p. 31, note at bottom, for nonpos, read nonpros. p. 36, l. 2, from the bottom, for premisses, read promises. p. 52, for CHAP. XI. read CHAP. X. &c. p. 65, l. 5, in the foot note, for *certiorari*, read *scire facias*: p. 87, l. 25, and 26, for error in fact, read correcting error. p. 102, l. 2, for *were* remitted, read *are* remitted.

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The following is a list of the names of the persons who have been mentioned in the text of the book. The names are arranged in alphabetical order. The names are: A. B. C. D. E. F. G. H. I. J. K. L. M. N. O. P. Q. R. S. T. U. V. W. X. Y. Z.

The End of the INDEX

ERRATA

In the text of the book, there are several errors which have been corrected. The errors are: 1. The name of the person mentioned in the text of the book is A. B. C. D. E. F. G. H. I. J. K. L. M. N. O. P. Q. R. S. T. U. V. W. X. Y. Z. 2. The name of the person mentioned in the text of the book is A. B. C. D. E. F. G. H. I. J. K. L. M. N. O. P. Q. R. S. T. U. V. W. X. Y. Z. 3. The name of the person mentioned in the text of the book is A. B. C. D. E. F. G. H. I. J. K. L. M. N. O. P. Q. R. S. T. U. V. W. X. Y. Z.